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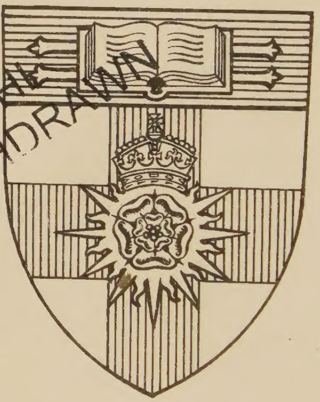

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1955

EDITORS

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THE CRIMINAL LAW REVIEW

Editors
JOHN BURKE and PETER ALLSOP, M.A.
Barristers-at-Law

Editorial

The New Year

January 1, 1955, sees the *Criminal Law Review* entering upon the second year of its exciting life.

We stated in our first Editorial that we hoped to include something of special interest for each of our varied classes of readers as well as much of importance to all, and in this we judge we have succeeded tolerably well. The purpose and scope of the *Review* therefore remain unchanged and the changes will be mainly of emphasis, though those which will strike the eye are, for technical reasons, a matter of type and arrangement.

The Calendar, Glossary and Index (including the names of cases reported) will be found together at the back of each issue.

The rather grimly efficient heading " Acts and Orders " has been found most useful and will in future give more space to important Acts and Orders by curtailing the treatment of matters of local interest. Rather more Parliamentary proceedings will be covered.

There is only one matter in which we feel dissatisfied. We would like to include more reports of proceedings in the magistrates' courts where points of novelty have occurred in matters of law and procedure. Even if no reasoned judgment is available, a statement of the points of the arguments on each side would be valuable. We appeal to our readers to have this constantly in mind and let us have a note of such matters.

L'Affaire Drummond

English lawyers are perhaps unfavourably disposed towards French criminal process because they think of the examining magistrate as acting as a prosecutor and because, if the newspapers are to be believed, of the uproar in which the actual trial is conducted. Professor Vouin's account on page 5 of the preliminaries to the trial for the Drummond murders is a salutory corrective. There is much to be said for a private investigation by the magistrates instead of trial by newspaper as is the English practice.

The "truth drug"

In June last year we published an account of a case in which a "truth drug" was used on a person accused of murder who was subsequently found guilty but insane. *The Solicitors' Journal,* in a recent issue (98 S.J. 794), report a case in which a motorist accused of manslaughter, after giving his version of the accident, agreed to undergo a "truth drug" test. The story he told in his normal state and the story he told whilst under the drug—pentathol and methydrene—were exactly the same. Dr. Hugh Garland, the doctor who administered the drug and gave evidence for the accused, said: "In the whole of my experience I have not known anyone who was able to lie while under the influence of these drugs. No one can resist their effects."

Recording as testimony to truth

Mr. T. B. Radley showed in his article last year ([1954] Crim. L.R. 96) that recordings of statements could easily be altered and forged thus destroying their value as evidence. Judge Daynes Q.C. recently had such a case before him when sitting at Southwark County Court. It is reported in *The Solicitors' Journal,* Vol. 98, p. 794, that a tape-recording of a conversation between a plaintiff and defendant was admitted as evidence; the plaintiff denied tampering with the recording but subsequently, after a tape-recording engineer had given evidence, he admitted that he had erased parts of the recording and re-recorded parts of the conversation. Judge Daynes informed the plaintiff that he might well go to prison for his perjury.

Traps for farmers

As a result of recent convictions of lime producers for obtaining lime subsidy payments by making false statements the Ministry of Agriculture and Fisheries warns farmers against signing blank subsidy forms. The farmer should not sign an application form until he has made sure that he has received the right quantity of lime at the right prices, and that the supplier has filled in the top part of the form correctly. If the supplier is to be paid the subsidy the farmer should check his supplier's invoice with the notice of payment sent by the Agricultural Lime Department.

Little credit can be given to anyone concerned in the prosecution of Mrs. Julia Farnes at Haywards Heath magistrates' court on November 1, 1954, reported in *The Estates Gazette* of November 13, p. 495. Mrs. Farnes having failed to sell a sow and ten piglets at a market in Haywards Heath took them home again. She was fined £1 for contravening the Regulation of Movement of Swine Order, 1954, by failing to obtain a licence from the police to move the pigs from the market.

Criminology

The Third International Congress will be held at Bedford College, London, from September 12 to 18, 1955, under the direction of a British Organising Committee and the International Society of Criminology.

The main subject of the Congress is Recidivism, which will be discussed under five headings: definitions and statistics; forms of recidivism and their evolution; causes; prognosis; treatment.

The preparatory work is organised on a national basis and will be in the form of reports collated by ten well-known criminologists acting as Rapporteurs Généraux.

There will be ample scope for individual papers and contributions.

The Congress is open to all scientists, medical men, judges, magistrates, lawyers, officials dealing with crime and criminals, penal administrators, social workers and others who are seriously interested in, or concerned with, the subject of criminology in general or recidivism in particular.

Further particulars will be sent on application to the Organising Secretary, 28, Weymouth Street, London, W.1.

Parliament

Before Parliament was prorogued on November 25, the House of Commons considered a number of matters of interest to our readers. Obscene publications were the subject of a debate, but as the main issue is whether the present law should be amended, the debate had little concrete result. The Home Secretary is considering what amendments might be made (H.C. Debates, Vol. 533, cols. 559 ; Nov. 18 : 1018 *et seq.* ; Nov. 22).

The United Kingdom subscription to Interpol has been doubled but is fully justified (Vol. 532, col. 1402 ; Nov. 11). Police enforcement of betting laws and police widows' pensions will not be the subjects of further inquiry (Vol. 532, col. 1404; Nov. 11: Vol. 533, col. *50*; Nov. 18). Claims by the police for costs against defendants acquitted of criminal charges are solely the concern of each police authority (Vol. 532, col. 1403; Nov. 11). The Home Secretary has asked the police to ensure that immediate medical assistance is obtained where a person thought to be intoxicated becomes ill while in custody (Vol. 533, col. *145*; Nov. 24).

Prison escapes are causing some concern at present and escapes from Strangeways Prison resulted in a number of questions. Unfortunately publicity cannot be given to the measures taken to prevent such escapes (Vol. 533, col. 553; Nov. 18). The present rules concerning preventive detention are causing dissatisfaction among both prisoners and public; but the Home Secretary does not consider an inquiry is justified (Vol. 533, col. 560; Nov. 18).

The Brakes on Pedal Cycles Regulations are considered effective in providing for two independent braking systems (see [1954] Crim. L.R. 729). The use in Great Britain of Northern Ireland driving licences, for which no driving test has to be passed, was criticised; the introduction of driving tests is being considered (Vol. 533, cols. 379, 380; Nov. 17).

The Home Secretary has not yet considered any amendment to the law enabling juries in criminal cases to reach their verdict by a majority decision (Vol. 533, col. *101*; Nov. 22).

The new session of Parliament began on November 30. The Queen's speech did not contain the expected proposals for amending the betting laws, but amendments to the road traffic laws are proposed and a Bill has been introduced for this purpose; new criminal courts are to be set up at Liverpool and Manchester (see [1954] Crim.L.R. 658) (Vol. 535, cols. 4 *et seq.*).

Judicial appointments

Sir Frederick William Gentle Q.C. has been appointed Judge Advocate General of H.M. Forces in succession to Sir Henry MacGeagh Q.C.

Mr. Norman John Skelhorn Q.C. has been appointed Recorder of the City of Plymouth and Mr. Geoffrey Veale, Q.C., Recorder of the City of Kingston upon Hull.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Review. They should be sent to the EDITOR, *Criminal Law Review*, 3 CHANCERY LANE, LONDON, W.C.2. *Every effort will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

L'Affaire Drummond

By Robert Vouin
Professor of Criminal Law in the University of Bordeaux

(*Translated by M. Lefébure, LL.B.(Lond.)*)

Preliminary Inquiry

The investigation into the triple murder at Lurs, begun the day after it had been committed on August 4, 1952, lasted for more than a year without giving any definite result. Various circumstances, and especially the weapon used, warranted the belief that the murderer must have been a close neighbour. The attitude of the Dominici family had appeared suspicious. Gustave Dominici was sentenced to two months' imprisonment, in accordance with article 63 of the Penal Code, for failing to succour young Elizabeth Drummond, whom he had found still alive on the morning of August 5, 1952 (Aix, 32 déc. 1952: Rec. Dalloz, 1953, p. 227). But precise charges had not yet been formulated against anyone.

On November 13, 1953, Gustave Dominici, and afterwards his brother Clovis, declared first to the police and then to the examining magistrate (" juge d'instruction ") that the person who had murdered the Drummond family was their father, Gaston Dominici.

Immediately placed under surveillance but not yet under arrest, Gaston Dominici made his deposition on oath on November 14. He denied all complicity in the crime and treated his sons as liars. Moreover his daughter-in-law, the wife of Clovis Dominici, disagreed with her husband's statements on certain points.

Continuing his deposition on November 15, Gaston Dominici acknowledged his guilt. But, he added, it was to save the honour of his sons, above all of Gustave, and to be rid of his wife with whom he did not get on. . . . He even maintained that he had been surprised by Sir Jack Drummond just as he was about to have relations with the latter's wife, with her consent.

At last on November 16 the magistrate went to the " *locus in quo* " at Lurs and proceeded to reconstruct the crime. During this reconstruction, Gaston Dominici tried to commit suicide. He was not subjected to any questioning. But he reproduced the actions corresponding to his testimony of the day before so perfectly that in the end the magistrate decided to charge (" inculper ") him formally and have him placed under arrest.

From then on, Gaston Dominici was remanded in custody (" détention préventive "), that is to say, kept in prison until his final trial. He had become technically an " inculpé ": officially designated as the person suspected of having committed the crime, an " inculpé " is no longer heard under oath and is questioned only in the presence of his counsel, who has the right to see the " dossier "—the entire record kept by the magistrate—the day before each questioning and who must be notified of every order or decision given by the magistrate, in accordance with the provisions of the " Code d'instruction criminelle," and the law of December 8, 1897. But Gaston Dominici was presumed innocent throughout, for the presumption of innocence always remains in France, until final verdict of the court of trial.

The preparatory examination (" instruction préparatoire ") appeared to substantiate the charges made against Gaston Dominici, and the magistrate accordingly on April 27, 1954, ordered (ordonnance de clôture) the " dossier " to be sent to the public prosecutor (" procureur général "). The latter brought the matter before the " Chambre des Mises en Accusation " of the Court of Appeal of Aix-en-Provence. And this court proceeded by way of " arrêt de renvoi "—committal order—to commit Gaston Dominici for trial before the Court of Assizes of the Basses-Alpes, upon a triple indictment for murder. Gaston Dominici is henceforth technically an " accusé," though still presumed innocent.

The accused, however, at this point took advantage of an opportunity which French law gives him. He applied by way of a " pourvoi en cassation pour violation de la loi," to have quashed for error in law the order committing him for trial. His application came before the " Chambre criminelle de la Cour de Cassation " in Paris. This supreme court quashed the committal order of May 6, 1954, by a decree dated July 22, 1954 (*Gazette du Palais,* September 24, 1954, and *Semaine Juridique,* 1954, II, 8352), and remitted the case to the Chambre des Mises en Accusation of the Court of Appeal at Grenoble (because the Cour de Cassation, being a court of Error only, cannot substitute its own order for the one it quashes).

The Grenoble court, taking up again and briefly completing the preparatory examination, made a new order of committal and it is in this way that Gaston Dominici came up for trial before the

Court of Assizes in the Basses-Alpes, which tried him in November.

I think that for the benefit of the readers of the *Criminal Law Review* it might be useful to study the judgment of the Cour de Cassation of July 22, 1954—which passed only on the legality of the preparatory examination and not on the guilt of Gaston Dominici—and that this study will retain its interest even though the result of the trial at the Court of Assizes is already known.

The Judgment of July 22, 1954

In support of his application to quash the committal order of May 6, Gaston Dominici invoked four reasons, four grounds of annulment: "moyens de cassation" as we say in France. He maintained that the order ought to be quashed for having infringed the law in four respects, in that it had committed him for trial despite four irregularities in the preparatory examination.

The following are the four grounds, of which only two were admitted by the Cour de Cassation.

(a) Gaston Dominici maintained first of all that the "ordonnance de clôture" of April 27, 1954, had not been communicated to his counsel as it should have been according to the provisions of the law of December 8, 1897. Article 10 of this law provides, in effect, that every order the magistrate makes must be brought immediately, through the clerk of the court, to the attention of the counsel of the inculpé. And case-law decides that compliance with this requirement can be proved only by express mention on the order itself (Crim. May 13, 1953: Bulletin Criminel, No. 168).

In the present case, the order did not contain such mention. At the date itself, registered letters had been sent to Dominici's counsel, as was proved by Post Office receipts. But such receipts are not sufficient satisfaction of the law's requirements. The order was a nullity, and the Cour de Cassation in fact quashed it. It can be seen from this how anxious the court is to secure a strict respect of the guarantees accorded to the defence.

(b) Similarly it was claimed on behalf of Gaston Dominici that the record ("procès-verbal") of his final questioning on April 21, 1954, did not indicate that the contents of the "dossier" had been made available to his counsel the day before the questioning as article 10 of the law of December 8, 1897, likewise requires.

In fact the "procès-verbal" recorded the presence of counsel during the questioning, and it might be inferred that they would have protested if the "dossier" had not been communicated to them. But no mention of such communication had been made in the record itself and as a result, the questioning had to be declared null, in accordance with precedent (Crim. Oct. 18, 1907: Bull. Crim. No. 423).

It must be noted that, according to article 12 of the law of December 8, 1897, the two rules of article 10 must be observed "under pain of nullity of the act and of the subsequent proceedings." In any event, therefore, the order of April 27 had to be declared null, as having followed the questioning of the 21st, itself null.

But the Cour de Cassation rejected the two other "moyens" ((c) and (d), below) put forward by Gaston Dominici: with the result that the proceedings *before* April 21, 1954, were held to be valid.

(c) It was also argued that a "procès-verbal" of March 21, noting the seizure of three rifles (of which none was the weapon used to commit the crime) had been recorded without the assistance of the clerk of the court, contrary to Article 28 of the Code d'Instruction Criminelle.

On this point, it was easy to answer that this irregularity was irrelevant, because, on March 21, the three weapons had been lawfully seized by an officer of the judicial police, himself properly authorised by the magistrate.

(d) The fourth reason put forward for quashing the committal order was much more serious. Gaston Dominici maintained that the magistrate had deliberately delayed charging him from November 13 to 16, whilst having him held illegally during these four days, so as to be able to continue to hear him as a witness and to deprive him of the guarantees assured to a defendant by law; he alleged that there had been a violation of the law of December 8, 1897, of various articles of the Code d'Instruction Criminelle, of the rights of the defendant and of the principle of personal liberty.

If this plea had been accepted it would have been necessary to declare the preparatory examination null as from November 14 or 15, 1953, and to start again from that point. The Cour de Cassation did not accept the fourth ground.

It is nevertheless on this point that its judgment of July 22, 1954, is especially important in law.

The Moment of Charge ("Inculpation")

To charge ("inculper") a person is to tell him formally that he is suspected of having committed a crime, at the same time informing him of the grounds upon which he is charged. It is evident that it is not upon any suspicion that a person should be charged, for otherwise it would often be necessary to charge persons, in fact innocent, who would be seriously prejudiced by such a charge.

On the other hand, to delay the charging of a suspected person too long would be to deprive him illegally of the guarantee which the law gives to "inculpés". As Professor C. J. Hamson has said, "the protection now afforded in France to the suspect once he is before the magistrate as an inculpé is considerable" (*The Times*, March 16, 1950). A suspect cannot be denied this real protection. The difficulty therefore is to establish some test whereby it can be judged whether the charge is proffered at the opportune moment, that is to say, neither too late nor too soon.

This difficulty is so great that the Cour de Cassation has from time to time ruled that the moment of charging must be left to the appreciation and conscience of the examining magistrate. This, for instance, was its decision in 1939, on the occasion of the famous Weidmann affair (Crim. Jan. 25, 1939; Bull. Crim., No. 14). But the rule is no longer so formulated in the most recent decisions (Crim. May 7, 1952, Bull. Crim. No. 19; May 5, 1953, Bull. Crim. No. 157), and, in practice, the Cour de Cassation has always exercised some control over the regularity of the preparatory examination on this point. It exercises its control more and more strictly, on the basis of the "dossier" of the proceedings, and its judgment of July 22, 1954, marks a definite advance in this direction.

Nevertheless, it is a fact that the Cour de Cassation ordinarily refuses to annul on the ground that the charge was unduly delayed. The reason for this is that the court will examine the object of the magistrate in acting as he did: it will inquire into the magistrate's state of mind—what was his view of the suspected person when he continued to hear him as a witness instead of charging him formally? This subjective criterion is not absurd; the Judges' Rules also adopt it in order to define the duties of the police officer who questions a person, suspected or not, when investigating a crime (see rule 2). But this criterion is not sufficient to secure an effective control of the magistrate, for a magistrate does not normally act with the fixed intention of circumventing the law.

It is therefore very important to note that the Cour de Cassation is tending more and more to use another criterion, an objective criterion. On the one hand it will review the actual proceedings to discover whether there were sufficient indications of guilt at the time of the act in question. On the other hand, it inquires into the results of the act: those proceedings will be declared void which have had as a consequence an actual infringement of the rights of the defendant.

The Rights of the Defendant

The infringement of the rights of the defendant must not be confused with violation of the law in the narrow sense. In the first place, this infringement consists of the prejudice which an inculpé in fact sustains in his defence, from the manner in which the proceedings against him are conducted. Secondly, the rights of the defendant go far beyond what is prescribed by the text of any written enactment.

On January 31, 1888, an examining magistrate in Paris was censured by the "Conseil Supérieur de la Magistrature" for having telephoned to a suspect whilst passing himself off as an accomplice (*cf*. Rousselet, "Les ruses et les artifices dans l'instruction criminelle," *Revue de Science Criminelle*, 1946, p. 50 *et seq*.). In 1949, a police officer instigated a telephone conversation between two suspected persons and listened in on a second receiver: the conviction of one of the two was quashed by the Cour de Cassation, on the ground that the "object and result" of the officer's action "was to evade the provisions of law and the general rules of procedure which the examining magistrate or his delegate cannot ignore without infringing the rights of the defence" (Crim. June 12, 1952; Sem. Jurid. 1952. II. 7241).

As a very learned magistrate, M. Brouchot, immediately commented: "the Cour de Cassation claims the right to examine and criticise every step in the inquiry including those to which the law has not specifically adverted: . . . it has clearly shown its intention to test not only the legality of the inquiry but also, if one may say so, its propriety." We may add that the "Conseil d'Etat," by means of the "recours pour excès de pouvoir" similarly controls the propriety of administrative acts. In both cases, it is no doubt a rule of law which is in question, but a rule far wider and higher than that resulting from the text of an enactment.

In any case, it can be clearly seen how the notion of infringement of the rights of the defendant allows of the solution in every particular case of the delicate question as to the exact moment of the formal charge. The Cour de Cassation was of the opinion that the examining judge could delay the charging of Gaston

Dominici until November 16, 1953, and that in doing so, "the magistrate has not in any way infringed the rights of the defence." And it also decided "that even if Gaston Dominici, whilst still a witness, had been under surveillance from November 14 to 16, 1953, it does not appear from any part of the record or from any protest made by him to the examining magistrate or to the Chambre des Mises en Accusation, that this surveillance had as its object and result any infringement whatsoever of the eventual rights of the defence."

Fact and Law

In arriving at this decision, did the Cour de Cassation act as a judge of fact or of law? The question has a twofold interest.

On the one hand, it is a clear rule that this supreme Court is not a judge of fact; it must accept the findings of the judge of first instance, it inquires merely whether the law was rightly or wrongly applied: it refuses to entertain any "moyen" which is even partially concerned with a question of fact. Is not infringement of the rights of the defence a question of fact?

A distinction is necessary. The Cour de Cassation was not concerned with the facts basic to the charge itself. It did not pronounce, even incidentally, on the guilt of Gaston Dominici. But it certainly examined the actual process: in the interlocutory proceedings concerned with the order of committal for trial by the Court of Assize, it dealt with the actual procedure followed, with the object of controlling the regularity of the preparatory examination. Since this control is indisputably within its province and since the Cour de Cassation was concerned only with this point, its decision of July 22, 1954, is certainly correct from a legal standpoint.

But on the other hand, in so far as the Cour de Cassation examined the actual process, in the sense I have just explained, its decision cannot properly be appraised by a commentator. It is not for an academic lawyer to say whether, in its judgment of July 22, 1954, it judged rightly or wrongly in the particular case of Gaston Dominici: for the simple reason that, as well as being written, the preparatory examination in France is secret. "It is forbidden to publish the indictment and other records of criminal proceedings . . . before they have been read in open court" (Art. 38 of the law of July 29, 1881, on the liberty of the press). Everything the examining magistrate does is recorded in the "dossier" of the proceedings. The Cour de Cassation has been able to read this "dossier." For my own part, I have no knowledge of it.

But the high professional standing of the judges of the Cour de Cassation guarantees the correctness of their decision. In any event, in quashing the order of committal of May 6, 1954, they have evidenced their intention to secure to a man accused of heinous crime, but nevertheless presumed innocent, the full integrity of all the rights of his defence and the benefit of a fair trial.

Advocacy at Petty Sessions

By B. Fraser Harrison, *Solicitor*

Introduction

Nine out of ten matters which come to trial are resolved in the petty sessional courts. It follows that most pleading done by lawyers is before a magistrate rather than before a judge. The wise young barrister commences his career before the magistrates; the solicitor advocate is restricted to practising in the lower courts; the experience of police officers and ministry officials as advocates in the role of prosecutor will be solely in the court of summary jurisdiction. It is for such advocates and practitioners that the present series of articles, which are to be published in book form when the series ends in September next, are designed.

There is no substitute for a careful study of the rules of evidence with which the advocate must be thoroughly conversant. All that follows should be considered as complementary reading to more authoritative works on the rules of evidence and advocacy.

The successful conduct of a court case depends not only on extensive and intelligent reading but on constant practice in the courts themselves. The inexperienced advocate should seize every opportunity to speak in court even although his earliest efforts may be no more than mere applications for adjournments. Not until he feels growing confidence in addressing a bench of magistrates should he attempt to conduct a case himself. It is at this stage that he may find these articles and the subsequent book will enable him to avoid the more embarrassing pitfalls.

The Client

Preliminaries

It is well to remember from the outset that the client is not a lawyer; he may not even be an educated man; nor, unfortunately, is he always to be believed.

It is with these facts in mind that a new client should be interviewed. Because such elementary information may be overlooked later he is first asked his name and address, age, occupation, salary, family, and anything else that may be of use, and only then the nature of the charge against him.

If he has been summoned not only is the charge itself set out on the summons, but also the Act or Regulation against which he has offended. Should the accused have been arrested, however, there is no such informative document, but the police will send a list of the charges if they are asked and it is wise to make the inquiry rather than to rely upon the client's memory.

The Statement

Taking a proof from a client or witness is more than merely writing down what he dictates. If there is time, and particularly in matrimonial cases where the statements are certain to be lengthy, it may assist the client to marshal his thoughts if he writes out his story at home, but this statement will not be sufficient for the brief.

Whether with or without the home prepared statement the quickest method of taking a proof is to dictate it to a shorthand writer; if the proof is of great length this may be a physical necessity. Because statements are obtained by a series of questions and answers it is possible for dictated proofs to be inaccurate and a more sure method is for the prooftaker himself to write out the statement in longhand or on a typewriter. If this is done it is possible to insist upon the client or witness reading the complete proof and signing it as evidence that he has done so.

When a statement is dictated it is wise to send the transcription to the witness and ask him to return it signed. Some solicitors object that if this is done the witness may change his mind and alter a favourable proof, but it is better that he should do so at this stage and give the defence warning, rather than at the trial when it is too late to do anything about it.

All that a client says is not written into his proof without thought. Although it is no part of a solicitor's duty to suggest a defence to his client, the client ought to be prepared for the cross-examination that is to come. His story is tested and pruned until the final product is a believably coherent account of what he alleges occurred.

The Accused and the Police

Over two matters a client is prone to be inaccurate; his past record, and conversations he has had with the police. We shall later see how a solicitor's advice whether a client should be tried by Quarter Sessions or by the magistrates depends upon the previous character of his client, and the decision to plead guilty or not is influenced by the admissions an accused has made to the investigating officers.

An accused is entitled to a copy of any statement he has made which has been written down and signed by him. Some prosecutors will also provide copies of unsigned statements and even of conversations, although these are the exception. The accused may also be informed of any previous offences of which it will be alleged he has been convicted and as a matter of course an application to the prosecutor to supply this information should be prepared for the client's signature. With it can be included the request for a list of the charges.

If there is time a copy of the statement made to the police ought to be obtained before the proof is taken from a client, because a defence wholly at variance with what the accused said to the police is likely to fail and the less difference there is between the facts set out in the final proof and those in the statement to the police the more likelihood there is of the accused being believed.

When faced with a particularly damaging statement that he has made to the police a client will frequently aver that he never said what is written or that the words and the final signature were forced from him. There are occasions when this happens and such a defence is devastating if it can be proved, but it is not a defence to be embarked upon lightly; if the magistrates do not believe the accused they will probably be additionally severe with him for attempting to discredit the police officers.

Sometimes a solicitor is consulted before the police have had an opportunity of interviewing his client and in this event the client should be warned against making any statement to the officers without his solicitor's advice.

No police officer may legally force a suspect to explain his actions; indeed the caution that ought to be given to a man whom the police have decided to arrest or prosecute contains the advice that he need say nothing unless he wishes. Nor need a suspect attend at a police station unless he wishes to or is arrested. This does not preclude the police from attempting to persuade the suspect to tell them his story and it is against that persuasion that the client must be warned.

The best advice is to tell the client to say nothing, *literally nothing*, no matter how foolish he may feel, unless his solicitor is present.

There are occasions when it is wise to make a statement to the police, and when a statement is necessary there is no reason why it should not be drafted by the solicitor and handed to the police by the accused without any amplification. Such a statement has the disadvantage of not being spontaneous, but all too often a man is convicted as a result of his spontaneous utterances and not as a result of what the prosecutor has proved by other evidence.

Friends and Relations

At the correct time the presence of a third party is useful, but at the initial interviews it is better to see the client alone. A client is sufficiently embarrassed at having to admit to his solicitor that he has acted foolishly, if not dishonestly, and a wife or mother in the room at the time might prevent him from disclosing all that his solicitor must know if the defence is to be properly conducted.

When the case has been prepared and the final decisions what to plead and where to plead are being made a friend may be useful. Even at this stage a friend is better than a near relative. The more unpalatable the advice, the better is a disinterested friend able to appreciate it, and it is a significant fact that a client will often act on unpleasant advice only after his friend has agreed and accepted it.

Prison Visiting

Sometimes an accused has been refused bail and has to await his trial or the hearing of his appeal in prison. Such clients require particularly sympathetic treatment and solicitors ought to recognise this fact by visiting them more frequently than is wholly necessary.

The appointment is arranged through the prison governor and takes place within the sight, but not the hearing, of a warder, without whose permission no documents should be left with the prisoner nor should any prison regulation, such as giving the prisoner food, be transgressed.

Letters to a client in prison should be sent in a sealed package to the governor, with a request that the package be handed to the client.

Where to Plead

Introductory

There are three decisions that have to be made in a criminal defence:—

(a) In what court should the plea be made?
(b) Should the plea be Guilty or Not Guilty?
(c) Should the plea be made by a barrister or a solicitor?

The first of these three questions is considered here. The second two will be discussed later.

Where to Plead

Only in certain circumstances has either the accused or the prosecutor the choice of the court in which the trial will be taken; some offences are too trivial for the time of a judge and jury to be taken up and others are so serious that it would not be proper for the magistrates to hear them; there are offences for which the accused may insist on being tried by a higher court and others where the magistrates may agree to determine the issue in spite of the apparent seriousness of the offence.

Trial by the Magistrates

A summary trial is both quicker and cheaper. Unless there are adjournments, only one appearance in court is necessary and the lawyer's fees will thus be appreciably less than if the accused were to be tried by a higher court.

Magistrates are laymen who do not necessarily sit regularly nor even frequently. They rarely have any training (except in the case of Stipendiaries) nor, unless they are also social workers, do they usually have extensive knowledge of the mode of life of the lower income groups.

Every magistrate has his own idiosyncrasies, with which an advocate who appears regularly before him will soon become familiar. Magistrates are treated with great deference by the police, with whom, especially in small rural courts, they tend to establish cordial relations. At times this makes it difficult for them to be wholly unbiased when judging two contradictory stories, one told by the police and the other by the accused.

Many accused persons whose guilt is obvious allege that the police are lying: this is so usual that the magistrates are unlikely to believe the occasional defendant who is truthfully accusing the police of false testimony, for both honest and fabricated defences to any particular crime have marked similarity and unless an accused produces a really novel defence the magistrates may well refuse to accept his story.

Generally speaking, magistrates are more ready to convict than are juries, but less severe than recorders or chairmen of Quarter Sessions. They also listen more sympathetically to a plea in mitigation.

In a summary trial the accused has no prior knowledge of what evidence the prosecutor intends to call. Even if the police provide copies of the statements made by the accused, his advocate has to rely upon his client's giving him an accurate version of what occurred.

It is the ignorance of what is to come and the inability of laymen to adapt themselves to the unexpected which are the principal disadvantages of trial by the magistrates.

Trial by Jury

The two important advantages of a trial by jury are the committal proceedings and a jury's proneness to acquit.

A trial by a jury, be it at the Assizes or Quarter Sessions, is preceded by a committal. At the committal the prosecutor should lay before an examining magistrate all the evidence which he will ultimately produce at the trial; if he wishes to call evidence additional to that produced at the committal he has to supply the accused with a written statement of that evidence. The evidence at the committal is given on oath and written down; if the accused is committed he may purchase a copy of the transcript from the magistrates' clerk. Thus, before the trial takes place the accused knows in detail the prosecutor's evidence without having to disclose his own case in the same way.

Proceedings before examining magistrates will be dealt with in a subsequent article.

Unlike magistrates, a juryman comes into court with few preconceived ideas. If, by any chance, he has a mission in life that may impair his judgment, he has eleven fellow jurors to cure the unbalance caused by his extreme views.

Jurors come from all walks of life and have, collectively, a far wider knowledge of life than two or three respectable magistrates. Many a juryman has himself bought nylons in a public-house without considering whether they were stolen; perhaps one or more of the twelve has no reason to love the police and may find this an easy and anonymous means of getting his own back; others, awed by the majesty of the court and the responsibility laid upon them, accept most conscientiously the repeated warnings that they *must* be satisfied of the accused's guilt beyond all reasonable doubt.

Juries, therefore, tend to be sympathetic. Recorders and chairmen do not: they have heard the excuses of so many wrongdoers that they are less easily influenced by a plea in mitigation. A bench of magistrates, after a plea of guilty, can be surprisingly lenient; a recorder will seldom be so. Many recorders, too, are additionally severe to an accused who has elected to be tried by a jury when he had the opportunity of a magistrates' trial.

To sum up: *when an accused has the option of where he will be tried, when the solicitor advising him has no personal knowledge of the court, and if the plea is "guilty," strive to be tried by the magistrates; if the accused denies the charge, advise him to be tried by a jury.*

(*To be continued*)

The Fraudulent Sub-Postmistress

By J. C. Smith, *Barrister-at-Law*

The case of *R.* v. *Williams* [1953] 1 Q.B. 660; 37 Cr.App.R. 71, gives rise to interesting problems, some of which were not adverted to by the court. The facts were that the appellants, man and wife, were charged on six counts with larceny of various sums from the Postmaster-General and on a seventh count with falsification of accounts. The wife only was charged on an eighth count with falsification of accounts. The jury convicted the appellants on all counts except the second, adding a rider to the effect that, in respect of the charges made in counts one and three, the appellants intended to repay the money and honestly believed they would be able to do so; and that in respect of counts four, five and six, they intended to repay but had no honest belief that they would be able to do so.

Mr. Williams was the proprietor of a general shop and his wife was the sub-postmistress of a post office conducted on the same premises. Mrs. Williams was entirely responsible for the accounts of both the post office and the shop. The business of the shop was in difficulties and Mrs. Williams, with the knowledge of her husband, took money from the post office till, and used it for the purposes of the business of the shop. She said that she thought that she would be able to repay the money out of her salary from the post office and sales in the business. Mr. Williams said that he knew that what they were doing was wrong, but that he thought it would all come right in the end.

On appeal the sixth count was quashed for duplicity since it charged the appellants with larceny of the aggregate of the specific sums which they were alleged to have stolen by the first five counts. The appeal on the other counts was dismissed. The argument appears to be concerned entirely with the meaning of the word "fraudulently" in section 1 (1) of the Larceny Act, 1916, and whether it could be said that the appellants were fraudulent in view of the jury's finding that they intended to repay the sums which they had taken. It is suggested, however, that this is not the only difficulty in the case.

The accused and the Postmaster-General

It does not appear from the report under which section of the Larceny Act the accused were charged, and it is presumed, therefore, that they were charged with simple larceny under section 2. The court does not appear to have considered the question of the contractual relationship existing between the Postmaster-General and the female appellant, yet this is a matter which radically affects the nature of the defendants' criminal liability. It is true that Lord Goddard C.J. does refer to the Postmaster-General as the "employer" of the appellants ([1953] 1 Q.B. 668); that he says "the appellants might quite properly have accounted to the Postmaster-General by paying over different coins or notes of a like amount representing the full amount of the takings" (p. 665); and that he assumes that the property in the notes and coins was in the Postmaster-General (p. 668). But none of these matters makes it clear whether he regards Mrs. Williams as a servant or as an independent contractor. Yet, it is submitted, the nature of the appellants' criminal liability may vary with the wife's status. If Mrs. Williams was an independent contractor she must have been either a trustee, a bailee, or a debtor with respect to the money she received on account of post office transactions. Clearly the court did not think she was a trustee since that would have meant that the property was in her and not in the Postmaster-General, and there could have been no possibility of larceny. The fact—as the court held—that Mrs. Williams was not bound to hand over the specific notes and coins but was merely under a duty to account for a corresponding sum indicates —though not conclusively—the relationship of debtor and creditor,[1] in which case, again, there could be no larceny. On the other hand the court appears to assume that the property in the notes and coins was in the Postmaster-General. This is incompatible with the debtor-creditor relationship, and points to that of bailor and bailee, in which case, of course, there could be larceny of the property bailed. It is possible that a bailment existed even though there was no obligation to hand over the specific money to the Postmaster-General, provided that there was a mandate to deal with it in a particular way. The point is not discussed in the report but, if the court was proceeding on the footing that Mrs. Williams was an independent contractor, it must be assumed that there was such a mandate in her contract, and that she was, therefore, a bailee.

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[1] The duty to return or deal in a prescribed manner with the specific coins is constantly stated in the reports to be the criterion of a bailment of money. See, *e.g.*, *R.* v. *Hassall* (1861) L. & C. 58; *per* Stephen J. in *R.* v. *de Banks* (1884) 13 Q.B.D. 29; *R.* v. *Aden* (1873) 12 Cox 512; Paton, *Bailment in the Common Law*, 25.

On the balance of authority, however, it seems that a sub-postmistress in the position of Mrs. Williams is a servant of the Postmaster-General and not an independent contractor. It is true that in *Williams* v. *Neath Assessment Committee* (1935) 52 T.L.R. 152, Lord Hewart C.J., having stated very briefly the duties of a sub-postmistress, said that the only possible conclusion was that the sub-postmistress was neither a servant nor an agent of the Postmaster-General, but was an independent contractor, who had agreed on certain terms to transact on her own premises certain business connected with the postal services. There was a genuine distinction between such a person and a person who was a servant or agent of the Crown. However, the only question before the Divisional Court in that case was whether the premises on which the business of the sub-post office was carried on were " occupied by or on behalf of the Crown for public purposes," and so exempt from liability for rates under the Rating and Valuation Act, 1925. The premises were owned and occupied by the husband of the postmistress, and it would seem that a conclusion as to the status of the postmistress was not necessary to the decision. The court held that the premises were not occupied by or on behalf of the Crown, and clearly this could be the case whether the occupier's wife were a servant of the Crown or whether she were an independent contractor. Goddard J. put his decision on the ground that the property " was occupied by Mr. Williams on his own behalf in order that his wife might carry out the terms of her contract with the Crown " (52 T.L.R. 157).

On the other hand there is a dictum by Lord Hanworth M.R., in *Frampton* v. *Gillison* [1927] 1 Ch. 196, that a sub-postmaster is a servant of the Postmaster-General. Here again, however, the question did not appear to be necessary to the decision, which was to the effect that a sub-postmaster was not " trading " within the meaning of the particular restrictive covenant to which the premises of his sub-post office were subject. The only decision squarely on the point seems to be *Appeal of Roberts, Re Postmaster-General* [1939] 4 All E.R. 269. There Branson J. had to decide whether a sub-postmaster was "employed under a contract of service" and so insurable under the National Health Insurance Act, 1936. He examined the terms of the contract between the sub-postmaster and the Postmaster-General in some detail, and, applying the usual test of the degree of control exercised by the employer over the employee, came to the conclusion that the sub-postmaster was not an independent contractor, but was under a contract of service. The learned judge pointed out that in *Williams* v. *Neath Assessment Committee* it did not appear that the Lord Chief Justice had before him the documents that had been produced in the instant case, and it was impossible to assume that if those documents had been before him, he would have come to the same decision.

Possession of the money stolen

Assuming then, as seems to be the law in the present state of the authorities, that Mrs. Williams was the servant of the Postmaster-General, her criminal liability was governed by well-settled principles. If she received property from her employer and fraudulently converted it to her own use she was guilty of larceny as a servant under section 17 (1) (*a*) of the Larceny Act, 1916. But if she received property from a third party "for, or in the name, or on the account of" her employer, and fraudulently converted it, she was guilty of embezzlement under section 17 (1) (*b*) of the same Act. Now the property in this case was certainly received in the first instance from a third party, and it is necessary to consider whether it subsequently passed into the possession of the Postmaster-General. The only way in which it appears possible that this might have occurred is by its having been placed in a till which was the property of the Postmaster-General. But it seems likely that the till in the case was the property, not of the Postmaster-General, but of the sub-postmistress. The standard form of contract for a sub-postmaster's appointment, Form R 52, contains a list of various articles, the property of the Postmaster-General, of which the sub-postmaster is required to acknowledge receipt, and this list does *not* include a till. On the other hand, Form P 188W, which sets out particulars of the appointment, says (under the heading, "Premises, etc."):

> "A Sub-Postmaster . . . must provide at his own expense such reasonable Office accommodation and fittings as the Department may require for carrying on the work of the Office. These fittings, etc., comprise, among other things, a counter, counter-drawers and *tills* for the official stock of

stamps, postal orders, etc., a cupboard or drawers for forms, a cash box (or safe), . . ."

It would seem then, that when the ordinary sub-postmaster—and there is no reason to believe that Mrs. Williams was an exception to the rule—abstracts money from the Post Office till, he cannot commit larceny since the money has never been out of his possession. But there appears to be no reason why the fraudulent sub-postmaster should not be convicted of embezzlement. It is true that he may have received the money innocently, and formed the intention to appropriate it subsequently when it was still in his possession—*i.e.*, in his till. Yet it does not seem ever to have been suggested that an innocent taking followed by a subsequent misappropriation is incapable of amounting to an embezzlement (as it is incapable of amounting to a simple larceny, or a receiving). Embezzlement is analogous to larceny as a servant rather than to simple larceny. It is also true that the learned editor of Kenny's *Outlines of Criminal Law* (16th ed.), p. 266 (this passage did not appear in previous editions), is of the opinion that it is essential to embezzlement that the servant "should be under the duty to pass over into the master's possession (*e.g.*, the till in the shop) the *identical* property which he receives," which was not so in the case of Mrs. Williams. No authority is cited for this proposition, and, with great respect, it is doubted if it is accurate. Does the servant in a shop or the cashier in a bank commit a breach of his duty if he puts into his wallet the £1 note which he has received over the counter and transfers two ten shilling notes from his wallet to the till? Surely no reasonable master or servant would regard this act as a breach of duty—yet there can be no doubt that such a servant can commit embezzlement of property received for his master.[2]

The Lord Chief Justice, while holding that the appellants were properly convicted of larceny, expressed the opinion that "it would have been far better, more regular and simpler, if . . . they had been charged with fraudulent conversion." The learned editor of Russell on *Crime* takes the view that the crime of fraudulent conversion applies only to "persons to whom ownership of the property has been transferred"; and that section 20 (1) (iv) of the Larceny Act, 1916, cannot properly be interpreted as applying to bailees or clerks and servants.[3] The reason advanced for this restrictive interpretation is that dishonest appropriations by these persons of property entrusted to them are dealt with as felonies in other sections of the Act: but that the person to whom *ownership* of property is entrusted is not liable under any other provision if he subsequently misappropriates the property. While it is agreed that it is illogical that a statute should make one and the same act a felony under one section and a misdemeanour under another, the fact remains that this appears to be precisely what the Larceny Act has done. Persons guilty of larceny as bailees or as servants, or of embezzlement, will, it seems, generally come within the plain words of section 20 (1) (iv). It is suggested, with the greatest respect, that it is impossible to put upon the words of the Act so great a restriction as that suggested in Russell, purely upon the conjecture that the legislature did not intend to make the same deed two separate crimes. It is submitted, with respect, that the Lord Chief Justice's suggestion would indeed make the problem simpler, since Mrs. Williams, whatever her status, was entrusted with the money and therefore could, apparently, be convicted of this crime whether she was a servant or an independent contractor; and furthermore, if she was an independent contractor, it would be immaterial, so far as fraudulent conversion is concerned, whether she acquired ownership or merely possession of the money.

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[2] Furthermore there are cases in which servants have been convicted of embezzlement even though the nature of their employment was such that it seems improbable that they were required to pay over the specific coins received. In *R.* v. *Balls* (1871) L.R. 1 C.C.R. 328, an agent and collector of a coal club was under a duty to receive payments by small weekly instalments, to send in weekly accounts on Tuesdays, and on each Tuesday to pay into the bank to the credit of the club the gross amount received. In *R.* v. *King* (1871) 24 L.T. 670, the conductor of a tramcar was under a duty to account each morning for the money taken the previous day by handing in way bills and a corresponding amount of cash. It appeared in evidence that conductors had to find their own change.

Meaning of "fraudulently"

The Court of Criminal Appeal was mainly concerned with the meaning of the word "fraudulently" in section 1 (1) of the Larceny Act, 1916. Counsel for the appellants submitted, and the court accepted, that the word "fraudulently" was intended to add and did add something to the words "without a claim of right" ([1953] 1 Q.B. 662). Counsel's suggestion that the word means "intending to act to the detriment of any person against that person's wishes" was, however, rejected. The opinion of the court was that the word means "that the taking is done intentionally, under no mistake and with knowledge that the thing taken is the property of another person" (*per* Lord Goddard C.J.

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[3] Russell, ii, 1239 (10th ed.); see also Kenny, *Outlines of Criminal Law* (16th ed.), 271.

at p. 666). It is rather difficult to see that this does add anything to the other words of the statute. Even if the word "fraudulently" were omitted from the Act it is, surely, clear that the words "with intent, at the time of such taking, permanently to deprive the owner thereof" require that the taking be intentional and with knowledge that the thing taken is the property of another person; while the words "without a claim of right" require that there be no mistake in the taking. In order to attribute some meaning to the word "fraudulently" the court appears to be putting a very narrow interpretation on the words "without a claim of right." This appears from the Lord Chief Justice's illustration:

> "A very simple illustration would be that of a person who picked up a suitcase at a railway station believing that it was his. There, the taking is under a mistake and he is not taking it fraudulently. Of course, if he knows that it is not his own, as is the case with those people who haunt the railway stations for the purpose of stealing suitcases, then it is larceny; but if a person, although he is not setting up a claim of right against someone else, takes away a suitcase in the mistaken belief that it is his own, he is not acting fraudulently" (p. 666).

With great respect it is submitted that a person who picks up someone else's suitcase in mistake for his own would usually be said to have a claim of right. It would appear that the Lord Chief Justice would limit the claim of right provision to the case where there is some dispute as to the title to the chattel. ("He is not setting up a claim of right *against someone else*.") It is submitted that the interpretation of the word "fraudulently" adopted by the Court of Criminal Appeal adds something to the definition of larceny only if this unnaturally restrictive construction is put upon the meaning of the phrase, "claim of right." Accepting—as the court did—that it is necessary to give a meaning to each word of the statute,[4] it is suggested, with respect, that the solution offered is not a very convincing one.

It is interesting to note the effect of the court's interpretation upon the hypothetical example put by the appellants' counsel in argument:

> "A barrister who is unexpectedly called on to argue a case has to spend a night in London. Working late in chambers he

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[4] [1953] 1 All E.R. 1070. ". . . counsel for the appellants rightly says that it is the duty of the court to give a meaning to every word in the section."

> remembers that he is short of cash and takes some money from the desk of a brother barrister, intending to repay it in the morning. At that moment a policeman comes in attracted by his movements. All the ingredients of larceny, apart from any meaning that can be attached to the word 'fraudulently' are present. Is the barrister a thief?" ([1953] 1 Q.B. 663.)

The barrister's act was certainly "done intentionally, under no mistake and with knowledge that the thing taken is the property of another person." According to the intepretation put upon the word in this case, then, the barrister was certainly "fraudulent" and therefore guilty of larceny. It is true that the Lord Chief Justice gave himself a loophole by saying "I am not saying that the words I am about to use will fit every case, but they certainly will fit this particular case" (p. 666); but it is difficult to see how the barrister could be acquitted of larceny unless that meaning is given to the words which was suggested by counsel and rejected by the court. Yet the barrister in this hypothetical case was certainly not fraudulent in any usual sense of that word: he was not *dishonest.*

It is perhaps significant that the versions of the judgment in the *Law Reports* and the *Criminal Appeal Reports* omit a distinction taken in those in the *Weekly Law Reports* ([1953] 2 W.L.R. 937 at 942) and the *All England Reports* ([1953] 1 All E.R. 1068 at 1070), between a person who uses someone else's money, intending to replace it and having the present ability to do so, and a person who does the same thing, when he is not in a position to replace the money but has only a hope or expectation that he will be able to do so in the future. It is said that no jury would hold the first person to be fraudulent, but that it is quite a different matter as regards the second. Yet this first person takes the money "intentionally, under no mistake and with knowledge that the thing taken is the property of another person." This would seem to indicate that some other ingredient, not specified by the Lord Chief Justice, is necessary to constitute fraud, and it is difficult to avoid falling back upon the repudiated suggestion of counsel.

If counsel's interpretation of the word in question had been accepted, could the appellants' conviction of fraud have been sustained on these facts? It is submitted that it could. Indeed, this seems to be admitted in counsel's argument as reported in the *Criminal Appeal Reports*:

> "If a person intends either to induce someone else to risk his money or himself to put someone else's money to risk, in cases in which he knows that the owner would not agree if he were aware of the true facts, such person is intending to act to

> the detriment of the owner against the owner's wishes. It must be conceded that an honest intention to repay, coupled with an honest belief in ability to repay in the future, is not necessarily a defence to larceny or to any other charge involving fraud" (37 Cr.App.R. 71 at 73).

Counsel's interpretation would then enable a court to convict persons in the position of the appellants of fraud, and at the same time to acquit the hypothetical barrister, or other borrower with present intention and present ability to repay. It is suggested therefore, with respect, that the word "fraudulently" does indeed add something to the definition of larceny, and that an accurate construction of the word was put forward by counsel in this case—*i.e.*, an intention "to act to the detriment of any person against that person's wishes."

Australian Police Notes

Police interest in this country in the few months since last I wrote has largely been centred in a Royal Commission into allegations that detectives had beaten a prisoner to obtain a confession, which found the allegation false. Otherwise there has been the usual run of murders, hold-ups, and other serious crimes of which a prompt solution justifies the Police Vote in the eyes of some of the public, at least.

Promised Legislation

Homosexuals

Of most interest to police themselves is the promised legislation designed to facilitate the proof of some crimes and close recently discovered loopholes in existing Acts. With a view to remedying the present weakness in the New South Wales law in respect to homosexuals, which I referred to in my letter in last February's issue, the State Cabinet has approved two amending sections to the Crimes Act, to provide:

"Section 81A. Whosoever being a male person who, in public or private commits or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of indecency with another male person shall be liable to imprisonment for two years."

"Section 81B. Whosoever being a male person, in any public place, (*a*) solicits or incites, or (*b*) attempts to solicit or incite, in any manner whatsoever any male person to commit or to be a party to the commission of any offence under sections 79–81 or 81A of this Act shall be liable to imprisonment for twelve months.

"A person shall not be convicted of an offence under this section upon the evidence of one witness alone unless the evidence is corroborated by some other material evidence implicating the accused in the commission of the crime." (Section 79 relates to buggery and bestiality; section 81 to indecent assaults on males.)

Culpable driving

The same session of Cabinet decided to widen the application of culpable driving charges. The present section, section 52A, Crimes Amendment Act, No. 31, 1951, reads:

"(1) Where the death of any person is occasioned through impact with a motor vehicle being driven by a person—(*a*) under the influence of intoxicating liquor or of a drug; or, (*b*) at a speed or in a manner which is dangerous to the public, the person last-mentioned shall be guilty of the misdemeanour of culpable driving and shall be liable to imprisonment for five years.

"(2) Where grievous bodily harm to any person is occasioned through impact with a motor vehicle being driven by a person—(*a*) under the influence of intoxicating liquor or of a drug; or, (*b*) at a speed or in a manner which is dangerous to the public, the person last mentioned shall be guilty of the misdemeanour of culpable driving and shall be liable to imprisonment for three years.

"(3) It shall be a defence to any charge under this section that the death or grievous bodily harm occasioned, as the case may be, was not in any way attributable to the fact that the person charged was under the influence of intoxicating liquor or of a drug, or as the case may be, to the speed at which or the manner in which the vehicle was driven.

"(4) This section shall not take away the liability of any person to be prosecuted for or found guilty of murder, manslaughter or any other offence, or affect the punishment which may be imposed therefor:

"Provided that no person who has been convicted or acquitted of any offence under this section shall afterwards be prosecuted for murder or manslaughter or for any other offence on the same or substantially the same facts, nor shall any person who has been convicted or acquitted of murder or manslaughter or of any other offence be afterwards prosecuted for an offence under this section on the same or substantially the same facts.

"(5) Upon the trial of a person who is indicted for murder or manslaughter or for any offence under sections fifty-three or fifty-four of this Act in connection with the driving of a motor vehicle by him, it shall be lawful for the jury, if they are satisfied that he is guilty of an offence under this section, to find him guilty of that offence.

"(6) In this section, 'drug' means a drug to which Part VI of the Police Offences (Amendment) Act, 1908, as amended by subsequent Acts, applies."

(Section 53 deals with the causing of bodily harm by wanton or furious riding or driving, or racing, or wilful neglect or other misconduct; section 54 to causing grievous bodily harm by an unlawful or negligent act or omission.) This section has been held to apply only to death or injury to pedestrians and, therefore, inapplicable when the victim is a passenger in another vehicle. It has soon revealed its weakness. The amendments will insert in subsections (1) and (2) after the words "motor vehicle" in each instance the words, "or through the impact of a motor vehicle with any vehicle or other object in on or near which the person was at the time of impact and in either case the motor vehicle was at the time of impact."

By inserting in subsection (4) after the word "offence" where thirdly occurring the words "under this Act." And by adding a new subsection (7) to read, "Without limiting the generality of the meaning of the expression 'object,' that expression in subsections (1) and (2) of this section includes animal, building and structure."

Petty sessions

A step towards facilitating the handling of indictable cases in petty sessions is also proposed. New legislation will provide for the committal to quarter sessions by a magistrate without the necessity of going into evidence and taking depositions in all cases where the offender indicates the intention of pleading guilty.

It is also proposed that when an accused person is charged on indictment, upon his signing a formal consent, outstanding charges against him may be considered on the question of sentence if he admits them and wishes them dealt with at the time. It shall be provided that the total sentence imposed cannot exceed the maximum for the offence charged in the indictment of which the offender has been convicted. This probably follows current practice in England.

The new legislation will allow more indictable offences to be dealt with summarily by consent of the accused. Included will be breaking and entering offences of lesser seriousness.

Instead of, as at present, accused persons being called on to answer held-over charges in petty sessions after appearing in quarter sessions on charges arising out of the same facts, the chairman of quarter sessions will be empowered to deal with the outstanding summary matters after disposing of the indictable offence. This provision will be used for the most part in driving offences where charges of negligent driving or failure to stop are now remanded until a major charge, such as causing grievous bodily harm, has been heard. In this provision, the chairman of quarter sessions will have the same powers as to sentence as the magistrate, in addition to any additional power he holds as a judge.

Compounding and Misprision of Felony

A prosecution was attempted in Darlinghurst Quarter Sessions in July of the rare charges of compounding a felony and misprision of felony. The accused was a member of a firm which was retained by several retail stores to check on employees' honesty. He was alleged to have detected an employee in an act of dishonesty and induced her to sign a confession of having stolen £468 over three years when she had only stolen about £30 over a few months. The complainant said she signed the confession because she was frightened by threats of prison. It was alleged by the Crown that the accused's firm was to get half of whatever was repaid in restitution by the complainant as a result of her confession. The charges of compounding and misprision were alternative counts to the indictment.

The compounding count failed for the lack of an agreement not to prosecute. As to the misprision, the judge felt that the law had been laid down by Lord Westbury in the House of Lords in *Williams* v. *Bayley* (1866) L.R. 1 H.L. 200 at p. 220, when he referred to the seriousness of a person concealing his knowledge of felony for gain.

Defence counsel also argued that misprision of felony no longer exists as a crime, having fallen into desuetude. This was not accepted by the judge; but he directed the jury to acquit on this count because there was no gain to the accused, the profit to his firm being beside the point since the firm was not indicted. He was perhaps influenced, also, by the comment of Lord Goddard in *R.* v. *Aberg* [1948] 2 K.B. 173 at 176, where he referred to the need for the elements of the offence to be fully considered in any such case and mentioned Lord Westbury's dicta.

This seems to be the only indictment for either compounding or misprision remembered at Darlinghurst by any of the present court officials, which might indicate that, so far as New South Wales is concerned at least, both have in fact fallen into desuetude.

Indecent Assaults by Males on Each Other

A few months ago the police in New South Wales were temporarily set back by a decision of one of our district court judges that where two males indecently handle each other it is not an assault if there is no violence or hostility. His opinion seems to have been influenced by the English case *D. P. P.* v. *Rogers* [1953] 1 W.L.R. 1017; but section 81 of our Crimes Act reads:

> " Whosoever commits an indecent assault upon a male person of whatever age, with or without the consent of such person, shall be liable to penal servitude for five years."

Notwithstanding the words " with or without the consent " it was successfully argued in quarter sessions that some violence or hostility must accompany an action before it can be said to be an assault.

On appeal by the Crown, the Supreme Court *in banc* held that this was not the law. The relevant English section, of course, does not include those important words, " with or without the consent."

Blood Tests and Alcohol

Blood tests to determine the extent to which a person is under the influence of alcohol, if at all, are at present under discussion in New South Wales by Road Safety Council and other Government-sponsored groups. Compulsory tests have been proposed; an alternative suggestion is for voluntary tests, which are, already, being carried out by the Government Analyst at the request of private medical practitioners called to a police station on behalf of the accused driver. It seems unlikely that provision will be made for compulsory tests in any new legislation enacted in this state in the near future.

One section of the public, which argues against the introduction of blood or urine tests on the ground that they are not quite reliable, were no doubt surprised by the result of an experiment conducted recently by one of our leading newspapers. It arranged for four men to be given alcoholic drinks in different amounts during a 130-minute session which was followed by a normal meal. The four were then taken to the Government Analyst's laboratory where samples of blood were taken. Mr. " A " had drunk fifteen glasses, each of 10-oz. of 4 per cent. beer; Mr. " B " eleven glasses; and Mr. " C " six glasses. Mr. " D " had had eight glasses, and, in addition, six nips of 1-oz. of 40 per cent. whisky.

The analyst found blood concentrations of: " A " = 148 mg. per 100 Ml. of blood, or 0·148 per cent.; " B " = 0·121 per cent.; " C " = 0·054 per cent. and " D " = 0·145 per cent.

His comment on the estimated amount of drink each had taken, given as a minimum figure, was: " A " = eleven 10-oz. beers, " B " = ten, " C " = five, and " D " = eleven. He stated that the result in respect to blood absorption is, for all practical purposes, the same whether the drinks be 10-oz. glasses of 4 per cent. beer, or 1-oz. nips of 40 per cent. whisky.

The only information given the analyst was that drinking had ceased about one hour before he took the samples. He pointed out, subsequently, that knowledge of the meal would have helped him because the intake of food slows down the absorption of alcohol by the blood.

Since we know that 10-oz. (or any other size) beer glasses are rarely filled, the analyst's minimum estimates must be very close to the mark; sufficiently so at least to impress on many fence-sitters that this branch of science is in pretty good shape, and not to ask for a blood or urine test if arrested for driving whilst under the influence after a session at the (brass-railed) bar.[1]

" INSPECTOR."

September 20, 1954.
SYDNEY N.S.W.

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[1] See Recognition of Intoxication [1954] Crim.L.R. 443.

The Magistrates' Association

By Bartha de Blank, B.COM., *General Secretary*

The annual general meeting of The Magistrates' Association was held in Blackpool on October 14 and 15, 1954,—the first time that this meeting has been held outside London in the thirty-five years of the Association's existence. Although the number attending was not so large as in previous years, it was generally agreed that the experiment of moving to the provinces had been well justified by the interest aroused and the keenness of those who were present.

Lord Merthyr, Chairman of the Council, presided and the proceedings were opened on Thursday afternoon by the Mayor of Blackpool. Dr. D. H. Stott, M.A., Research Fellow of the Institute of Education, Bristol University, then spoke on " A national policy for dealing with young offenders." He stressed the importance of the family background in juvenile delinquency, and urged the setting up of an expert body of " family advisers " to deal with the situation as a whole, instead of the " multiplicity of social workers hovering round the wayward family."

On Thursday evening the Mayor kindly gave a reception and orchestral concert for the members, and this informal occasion was much appreciated.

Next morning, Mr. J. Robertson Crichton, Q.C. (Recorder of Blackpool), spoke on " The problem of punishment." Although reform was important, the retributive and reparative aspects had to be given due consideration, and magistrates should balance the interests of society and the defendant.

In the afternoon Lord Lloyd, Under-Secretary of State for the Home Department, spoke on some aspects of the Justices of the Peace Act. He dealt with various administrative matters, the recruitment of justices' clerks, and the new rules to govern the constitution of juvenile courts.

A number of resolutions were also discussed. Mr. Guy Sixsmith, Stipendiary Magistrate for Cardiff, proposed a resolution that as speed limits for road vehicles are not being properly enforced they should be repealed. Many motorists and very many coach and lorry drivers regularly exceeded the speed limit, and nothing could be worse than the present situation, where magistrates were simply imposing fines on a few unlucky people.

During a lively discussion it was suggested that patches of corrugation on roads might be used to warn motorists to drive more slowly. One member felt that the removal of the speed limit would encourage "road hogs" but suggested that higher penalties would have a salutary effect.

The resolution was defeated.

The meeting passed, by a large majority, a resolution asking the Association to obtain the views of benches on the desirability of a Royal Commission being appointed to conduct an inquiry into registered clubs. It was generally agreed that the present position whereby intoxicants could be supplied in all types of premises with little or no restraint was unsatisfactory, and that the law should be reviewed.

Other resolutions called for a greater measure of uniformity in the fines imposed for minor offences, proposed that approved schools should in future be known as training centres, and suggested that insufficient consideration appeared to be given by magistrates to the type of boy being sent to detention centres. These were all defeated.

A luncheon attended by nearly 250 magistrates and friends was held between the morning and afternoon sessions, at which Sir Leonard Stone, Vice-Chancellor of the Duchy of Lancaster, proposed the toast of the Association.

The Infallibility of Finger-Prints

By J. P. Eddy, Q.C.

It was over fifty-three years ago—in July, 1901—that the present collection of finger-prints at New Scotland Yard was started. It began as a humble collection of prints recorded haphazard on cards and housed in a simple chest of drawers. The report of the Commissioner of Police of the Metropolis for 1953, which was presented to Parliament in August last, shows that the collection now runs into over a million and a half prints.

Judicial opinions

In only two cases, apparently, has the Court of Criminal Appeal had to consider finger-print evidence. The first was the case of *R.* v. *Castleton* in 1909 (3 Cr.App.R. 74). The second was the case of *R.* v. *Bacon* in 1915 (11 Cr.App.R. 90).

Castleton's case was an application for leave to appeal. The prisoner had been convicted of burglary. It was submitted on his behalf that the conviction was bad as the only evidence against him was that of finger-prints upon a candle left behind. His counsel said that even supposing the prints on the candle were those of the prisoner, the evidence was not sufficiently weighty. He was an associate of thieves, and it might have been that the finger-prints were put there by someone else.

"Can the prisoner find anybody whose finger-prints are exactly like his?" asked Darling J.

Counsel said he was not instructed as to that, but the candle might have been used by somebody else, although it belonged to the prisoner.

The court agreed with the evidence of the expert at the trial, and dismissed the application.

In *R.* v. *Bacon* (above) the appellant was convicted of larceny, and sentenced to fifteen months' imprisonment. He protested that evidence of previous convictions in various names which he had never used had been given against him at his trial, and suggested that in some cases he had been mistaken for his brother.

The court adjourned the case in order that an official from Scotland Yard should produce the finger-prints. On their production, the court examined the prints and then dismissed the appeal. "We have no doubt that they are all the same," said the Lord

Chief Justice (Lord Reading), " and that they tally with the finger-prints of the appellant."

Finger-print evidence was considered in Scotland in *Hamilton* v. *H.M. Advocate* in 1933—in an appeal to the Court of Justiciary from a conviction in the Sheriff Court at Glasgow for shop-breaking (1934 S.C. (J.) 1). At the trial two Scotland Yard experts gave evidence that a finger-print found on a bottle at the premises was that of the accused. Apart from the fact of the accused's residence in the neighbourhood, this was the sole evidence bearing upon his connection with the crime.

The Court of Justiciary dismissed the appeal. The Lord Justice-General (Lord Clyde) said that the two experts went as far as to claim for the finger-print method of identification the quality of infallibility. " This may well be thought (in words at least)," he said, " to put the case too high, but the substance of their evidence was that, over an area of experience of great extent, and over a tract of time of highly significant duration, the finger-print method of identification has never once proved to be unreliable."

Lord Sands said that two witnesses who were expert in the study of finger-marks came and they said, " We have examined the bottle and we have examined the print of the accused's fingers, and the mark on the bottle is the mark of the accused's finger." " The day may come," added Lord Sands, " when that will be enough, but that day has not yet quite come." He did not for a moment say that a jury were bound to accept finger-print evidence, and expert evidence connected with it, in every case as conclusive. It was a question for the jury in the particular case, and, in order to disturb their verdict, it would be necessary to conclude that it was not a view which a jury might reasonably have taken.

Lord Blackburn expressed preference for the word " reliable " in describing finger-print evidence rather than the word " infallible."

In 1944, in a housebreaking case tried in the High Court at Edinburgh, *H.M. Advocate* v. *Rolley* (1945 S.C. (J.) 155), expert witnesses identified a palm-print found on a sideboard in the house which had been broken into with a palm-print of the accused. The Lord Justice-Clerk (Lord Cooper) directed the jury that the evidence, provided they accepted it, was sufficient to warrant a conviction. The jury returned a verdict of guilty.

The Blackburn baby case

Twenty-one years ago, in *Hamilton* v. *H.M. Advocate* (*supra*), Lord Clyde deprecated the use of the word " infallible " for the finger-print method of identification. But is not its use fully justified today? No two persons in the world have been found to possess similar finger-prints. Indeed, it may well be thought that the finger-print system must be infallible if it is to be a sure guide in the detection of crime and the conviction of offenders. The only answer to a finger-print, it is suggested, is that it got where it was found legitimately.

An outstanding illustration of the use of the finger-print method of identification is what is known as the Blackburn baby murder case. In the early hours of May 15, 1948, a three-year-old child, June Anne Devaney, was taken from her cot in a ward at the Queen's Park Hospital, Blackburn, carried to a spot outside, a distance of over 90 yards, and murdered. On the floor beside the cot from which the child was taken was a Winchester quart bottle, and on this the murderer had left his finger-prints. But who was he? Finger-prints filed in bureaux were of course carefully examined, but without result.

Then on May 23 began the task of tracing and finger-printing all men of sixteen years of age or over who had slept in Blackburn—a town of some 110,000 inhabitants—on the night of the murder. The Mayor appealed for persons to volunteer their finger-prints, and, such was the response, that no fewer than 46,000 were taken. This meant that not only had the 35,000 houses in Blackburn to be visited, but the information obtained necessitated inquiries being sent to the police in Australia, India, Egypt, South Africa, Singapore, Canada, the United States, almost every country in Europe, and to all parts of the United Kingdom.

The police had nearly completed the finger-prints of the whole male population of Blackburn, down to the last hundred, when the wanted finger-prints came to light. On August 11, that is to say about three months after the murder, a police officer went to a house in Birley Street, Blackburn, where he saw an ex-Irish Guardsman, Peter Griffiths. The police officer asked him if he had any objection to his finger-prints being taken, but he made no reply, and gave them on a card. The finger-prints on the bottle and the finger-prints on the card were identical.

Griffiths was arrested in Blackburn on August 13, and charged with the murder of the child, June Anne Devaney. He was tried before Oliver J. at Lancaster Assizes on October 15 and 16. He was convicted and sentenced to death. He was executed on November 19.

Practice and Procedure

Quarter Sessions

Power to order Borstal training on appeal from magistrates' courts

Let it be assumed that a juvenile court has convicted a lad aged sixteen and made an approved school order from which he has appealed to quarter sessions. On hearing the facts and the character and antecedents of the appellant the appeal tribunal considers that, for him, Borstal is more appropriate than an approved school. Several interesting considerations then arise.

In the first place, can quarter sessions immediately proceed to substitute an order for Borstal training for the approved school order? The answer must be " No," because when determining an appeal the powers of quarter sessions, whether exercised by a court consisting of members of an appeal committee or by a recorder, are limited to those possessed by a magistrates' court and such a court cannot make an order for Borstal training. What it can do is to commit a person between the ages of sixteen and twenty-one who has been convicted before it to quarter sessions under section 28 of the Magistrates' Courts Act, 1952, with a view to a Borstal sentence. If it so acts the case comes in due course before a court consisting of members of the appeal committee in a county or the recorder in a borough, so that in both cases the tribunal is constituted in the same way as for an appeal. The difference in powers is due to the different procedures for bringing the accused before quarter sessions.

It would be absurd if there was no way of getting over the difficulty, but fortunately there is. A court of quarter sessions when disposing of an appeal may by its order " exercise any power which the court of summary jurisdiction might have exercised " (Summary Jurisdiction (Appeals) Act, 1933, s. 1 (vii)). Such a power is the power to commit to quarter sessions under section 28 of the Magistrates' Courts Act, 1952, with a view to a Borstal sentence. There is, of course, something Gilbertian in the situation because when the appeal tribunal exercises this power it, in effect, commits to itself, and it may be suggested that if it can do this it can immediately assume jurisdiction to make a Borstal order.

It is submitted, however, that this is not right. Before exercising its powers of committal under section 28, a court of summary jurisdiction must consider any report or representations made by the prison authorities as to the offender's physical, mental and general suitability for Borstal, and the offender or his legal adviser is entitled to a copy. In most cases no such report is before the lower court when an approved school order is made, and there must be an adjournment at quarter sessions to obtain it. Even when a lower court has had a report and has sent it up with the other papers, it may well lead to confusion if a Borstal sentence is immediately substituted for the approved school order. There are two separate stages: first, the committal to quarter sessions under section 28 of the Magistrates' Courts Act, 1952, and, secondly, the sentence of Borstal training under section 20 of the Criminal Justice Act, 1948. If one immediately follows the other in the same court it gives an opportunity for the objection that what the appeal court has really done is to impose a sentence beyond the powers of the lower court and, therefore, on that occasion, beyond its own. If the two stages are kept quite separate and dealt with on different occasions no such objection could easily be sustained. [Brigadier A. C. C. Willway, C.B., C.B.E., T.D., D.L., Deputy Chairman, Surrey Quarter Sessions.]

Case and Comment

The reports of cases to which initials are appended hereunder have been specially prepared for *The Criminal Law Review* by the following reporters:—

HENRY PALMER, *Barrister-at-Law*.
J. D. PENNINGTON, *Barrister-at-Law*.

Evidence—*Expert—foreign law—competency of witness who is not a lawyer*

SAID AJAMI *v.* COMPTROLLER OF CUSTOMS [1] (Judicial Committee of the Privy Council: Lords Morton of Henryton, Keith of Avonholm and Mr. L. M. D. de Silva: November 8, 1954) ([1954] 1 W.L.R. 1405).

A. attempted to export from Nigeria a number of French colonial franc notes. The comptroller of customs claimed against A. a penalty and the forfeiture of the notes on the ground that the attempted exportation was made contrary to the Nigerian Exchange Control Ordinance, 1950, which prohibits the exportation of " any notes of a class which are or have at any time been legal tender in the United Kingdom . . . or any other territory." On appeal from the West African Court of Appeal, A. contended that evidence of a branch bank manager, who had been engaged in banking business in Nigeria for twenty-four years, that the notes were legal tender was inadmissible as expert evidence, and that on a matter involving a question of law no person who was not a professional lawyer could be regarded as a competent expert.

Held, dismissing the appeal, that the practical knowledge of a person not a lawyer might be sufficient in certain cases to qualify him as a competent expert, and in the present case the manager's evidence was admissible. [J. D. P.]

COMMENTARY. The court approved the principle in *Vander Donckt* v. *Thellusson* (1849) 8 C.B. 812, that a person who has become conversant with a point of foreign law by carrying on a business which makes it in his interest to know it, is a competent witness on that point even though he is not a lawyer.

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[1] For the appellant: *Ralph Millner, Biden Ashbrooke* (instructed by Hatchett Jones & Co.). For the respondent: *B. J. MacKenna Q.C., D. A. Grant* (instructed by Charles Russell & Co.).

Food and Drugs—*Fat—false description as " lard "*

GREGORY *v.* WOOLRICH-JONES[2] (Nottingham Magistrates' Court: G. E. Goodall, Esq., Chairman: November 9, 1954).

The defendants were charged with causing hydrogenated animal fat to be sold under the false description of " English Refined Lard." The defendants' firm was one of several through whose hands a consignment of hydrogenated animal fat had passed from the manufacturers; it had passed to them under the description " refined hog fat " but had been invoiced by them to a firm of produce merchants as " English Refined Lard " and labelled by them as such. This description was retained in succeeding transactions. The defendants pleaded that the firm from whom they received the fat had described it as " refined hog fat " in a written warranty and argued that this meant " 100 per cent. refined hog fat," which was the same as lard.

Held, the defendants were guilty. One who accepted full responsibility was fined £20; the other was discharged absolutely.

[Reported by G. D. Yandell, *Clerk to the Justices.*]

Fraud—*Meaning of " public company "—whether cancellation of a debt a " transfer of property."*

R. *v.* DAVIES[3] (Court of Criminal Appeal: Lord Goddard C.J., Lynskey and Ormerod JJ.: October 25, 1954 ([1954] 3 W.L.R. 664; [1954] 3 All E.R. 335).

D. appealed against his conviction for fraudulent conversion under section 20 (1) (ii) of the Larceny Act, 1916, on the ground that, being a director of a private company registered under the Companies Act, 1948, he was not " a director . . . of . . . a public company " within the section. He also appealed against his conviction for an offence under section 330 (*b*) of the Companies Act, 1948, on the ground that the transaction referred to in the count, namely that he " . . . being an officer, namely a director, of a company . . . did with intent to defraud creditors of the company, attempt to transfer to [himself] property of the company, to wit, an indebtedness in the sum of £30,000 then owing by [him] to the company," did not amount to a "transfer of property" within the section.

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[2] For the prosecution: Mr. T. L. E. Gregory, Chief Officer under the Food and Drugs Acts to the Nottinghamshire County Council. For the defence: Mr. Darrell H. Mace, Solicitor.

[3] For the appellant: *Viscount Hailsham Q.C., H. P. B. Dow* (instructed by Ernest W. Long & Co.). For the Crown: *W. A. L. Raeburn Q.C., Mark Littman* (instructed by the Director of Public Prosecutions).

Held, (1) dismissing the appeal on the first point, that a "public company" for the purpose of section 20 (1) (ii) of the Larceny Act, 1916, means a company incorporated under the provisions of the Companies Acts, as is a private company; (2) allowing the appeal on the second point, that inducing the company to record a debt owing by D. to the company as cancelled, was not a "transfer of property" within the meaning of section 330 (*b*) of the Companies Act, 1948. [H. P.]

COMMENTARY. See Archbold, 33rd ed., 701, 753.

Jury—*Taking verdict of—change of plea.* See R. *v.* BREED, p. 44, below.

Maintenance—*Common interest—action to restrain pollution of fishery—plaintiff's acceptance of indemnity for costs*

MARTELL *v.* CONSETT IRON CO.[4] (Chancery Division: Danckwerts J.: October 22, 1954) ([1954] 3 W.L.R. 648; [1954] 3 All E.R. 339).

The riparian owner and trustees of an angling club, claimed an injunction to restrain the defendants' iron works from polluting the water of their fishery. They were indemnified for their costs by an association whose objects included the protection of the interests of anglers and the prevention of pollution. By a summons the defendants sought a stay of proceedings on the ground that the action was being illegally maintained by the association.

Held, distinguishing *Alabaster* v. *Harness* [1895] 1 Q.B. 339, that the plaintiffs and the association had a common interest and the action was not unlawful. [J. D. P.]

COMMENTARY. In *Alabaster* v. *Harness, supra,* Harness was interested in the sale of certain electrical appliances and provided money for an expert, who had favourably reported on them, to bring an action for libel against persons who had criticised his report. It was held that Harness had no common interest with the expert in the action for libel.

See Archbold, 33rd ed., 1267.

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[4] For the applicant company: *Sir Andrew Clark Q.C., Kenneth Elphinstone* (instructed by Allen & Overy). For the respondents (plaintiffs): *Charles Russell Q.C., G. H. Newsom* (instructed by Gerrish & Co.).

Road Traffic—*" A " carrier's licence—aiding and abetting carriage of goods without permit*

DAVIES, TURNER & Co. *v.* BRODIE [5] (Q.B., Divisional Court: Lord Goddard C.J., Lynskey and Ormerod JJ.: October 21, 1954) ([1954] 1 W.L.R. 1364; [1954] 3 All E.R. 283).

D. & Co. were approached by the driver of a transport firm for an order for the carriage of goods; the driver's vehicle had an " A " licence but, unknown to the driver, required a permit to carry the goods in question under section 52 of the Transport Act, 1947. D. & Co.'s manager asked the driver if he had a permit, the driver said that he had, but failed to produce it. The manager then required him to sign an assurance that his employers held the necessary documents and would produce them if required. In fact there was no permit for the carriage of the particular goods. D. & Co. were convicted of aiding and abetting the driver's firm in the commission of an offence. On appeal:—

Held, allowing the appeal, and distinguishing *Carter* v. *Mace* [1949] 2 All E.R. 714, that the manager had acted in good faith, and taken reasonable precautions to prevent the commission of an offence and, therefore, D. & Co. were not guilty of aiding and abetting. [J. D. P.]

COMMENTARY. Lord Goddard C.J. repeated what he said in *Johnson* v. *Youden* [1950] 1 K.B. 544 at 546, namely, that " before a person can be convicted of aiding and abetting the commission of an offence he must at least know the essential matters which constitute that offence."

In *Carter* v. *Mace, supra,* the person hiring the vehicle failed to inquire at all whether the lorry owner was legally entitled to carry the goods concerned.

Road Traffic—*Defective brakes—vicarious liability*

JAMES & SON *v.* SMEE; GREEN *v.* BURNETT [6] (Q.B. Divisional Court: Lord Goddard C.J., Cassels, Lynskey, Slade and Parker JJ.: October 22, 1954) ([1954] 3 W.L.R. 631; [1954] 3 All E.R. 273).

Two companies were charged with offences under regulations 75 and 101 of the Motor Vehicles (Construction and Use) Regulations,

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[5] For the appellant: *Gilbert Dare* (instructed by Coward, Chance & Co.). For the prosecution: *J. P. Ashworth* (instructed by the Treasury Solicitor).

[6] For the first company: *Norman Skelhorn Q.C., C. D. Brandreth* (instructed by Hugh-Jones & Co.). For the prosecution: *Paul Wrightson* (instructed by the Solicitor, Metropolitan Police). *F. P. Neill* (instructed by Cummings, Marchant & Ashton, for R. C. Linney, Wakefield). The second company did not appear and was not represented.

1951. The first company were charged with permitting the use of a trailer with a defective braking system, when one of their servants drove a motor-lorry belonging to the company with a trailer attached without connecting the brake cable to the trailer. The second company were charged with using a motor-van the braking system of which was not maintained in proper working order, such a vehicle having been driven by one of their servants.

Held, (1) applying *Mousell Brothers* v. *London and North Western Railway Co.* [1917] 2 K.B. 836, that before a company could be held guilty of permitting a user in contravention of reg. 75 it had to be proved that some person for whose criminal act the company was responsible permitted as opposed to committed the offence, and there being no such evidence in the case of the first company it was not guilty of the offence charged.

(2) In the case of the second company the prohibition against user in contravention of the regulation was an absolute one in the sense that no *mens rea,* apart from user, need be shown to constitute the offence and, since a master uses a vehicle through his servant when the servant is on the master's business, the company were guilty of using a vehicle contrary to the regulations. [J. D. P.]

COMMENTARY. See Stone, 86th ed., 2758, 2763.

Road Traffic—*Heavy motor-car—marking—" alternative body "*

CORDING *v.* HALSE [7] (Q.B. Divisional Court: Lord Goddard C.J., Lynskey and Ormerod JJ.: October 20, 1954) ([1954] 3 W.L.R. 625 ; [1954] 3 All E.R. 287).

C., the owner of a motor-lorry, was convicted of failing to have the prescribed markings showing unladen weight and maximum speed on the lorry as required by the Motor Vehicles (Construction and Use) Regulations, 1951, reg. 61, and of permitting the use of the lorry not displaying a speed limit disc contrary to regulation 63. The lorry had behind the driver's cab a flat wooden platform to which sideboards could be secured when the vehicle was used as a drop-side vehicle. To make the lorry suitable for the carriage of cattle a large wooden box-like container with two sides and two ends, a roof and floor was attached to the platform by six wing nuts and bolts. The unladen weight of the lorry without the container was less than three tons, with the container in excess of three tons. On appeal:—

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[7] For the appellant: *M. A. B. King-Hamilton Q.C., John Harington* (instructed by Baileys, Shaw & Gillett for Tozers, Dawlish). For the respondent: *Robert Hughes* (instructed by Rashleigh & Co. for Alms & Young, Taunton).

Held, allowing the appeal, and applying *M'Cowan* v. *Stewart,* 1936 S.C.(J.) 36, where the facts were similar, that the container was not an " alternative body " within the meaning of section 26 of the Road Traffic Act, 1930, and, therefore, the unladen weight of the lorry without the container being less than three tons, the lorry was not a heavy motor-car to which the regulations applied. [J. D. P.]

Trial—*Change of plea—verdict of jury not taken*

R. *v.* BREED [8] (Court of Criminal Appeal: Lord Goddard C.J. Hilbery and Ashworth JJ.: November 22, 1954) (*The Times,* November 23, 1954).

On arraignment B. pleaded Not Guilty to each of eight counts in the indictment and was put in charge of a jury. Subsequently he changed his plea to Guilty to two counts. Thereupon the Recorder discharged the jury from giving a verdict on those counts and formal verdicts of Not Guilty were taken in respect of the other six counts. B. appealed against his sentence of eight years' preventive detention and (at the invitation of the court on the hearing of the application for leave to appeal) against his conviction on the ground that there had been a mis-trial.

Held, that the Recorder had been wrong in failing to take a verdict on the two counts on which B had changed his plea to Guilty. Unless B. agreed to withdraw his appeal against conviction, the court would have to send him back for retrial. (B agreed to withdraw his appeal against conviction.) In view of all the circumstances, the sentence of preventive detention would be set aside and one of five years' imprisonment substituted. [H. P.]

COMMENTARY. See Archbold, 33rd ed., 135.

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[8] For the appellant: *D. W. Powell* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *John Rutter* (instructed by the Director of Public Prosecutions).

Acts and Orders

Agriculture

PESTS ACT, 1954 (2 & 3 Eliz. 2, c. 68): operative November 25, 1954. Provision is made for the more effective control of rabbits. The Minister of Agriculture and Fisheries may make orders designating rabbit clearance areas. In such areas occupiers of land are required to take all necessary steps for the killing or taking of wild rabbits, and where it is not reasonably practicable to destroy them, to prevent damage by rabbits. They must comply with any directions contained in the rabbit clearance order. For failure to comply with those requirements the penalty is a fine not exceeding £25, and a fine not exceeding £5 for each day on which the offence continues after conviction (section 1 (1), (2), (9)). An occupier in a clearance area who is restricted to his rights under the Ground Game Act, 1880, s. 1, has no additional right to authorise persons to kill rabbits on the land with firearms, except by sanction of the Minister (section 1 (3)–(7)). Persons authorised by the Minister have power to enter and inspect land subject to an order at all reasonable times; the provisions of section 106 (2)–(7) of the Agriculture Act, 1947, as to entry and inspection apply; the penalty for obstructing an authorised person is a fine not exceeding £5 for a first offence and £20 for a subsequent offence (section 1 (8), (9)).

A new provision is added to section 98 of the Agriculture Act, 1947, which gives the Minister a number of powers concerning prevention of damage by pests. He may by notice in writing served on the occupier of any land require the occupier to destroy or reduce the breeding places or cover for rabbits, or to take steps to exclude rabbits from them or to prevent rabbits from spreading to or doing damage in any other place (section 2). The penalty for failing to comply with the notice is a fine not exceeding £25, and a fine not exceeding £5 for each day on which the offence continues after conviction.

The Minister or the Secretary of State may, for the purposes of the Agriculture Act, 1947, s. 98, ask for certain information concerning the interests held by persons in land, and any person failing to give such information, or who knowingly makes any misstatement, is liable to a fine not exceeding £5 (section 4).

A fine not exceeding £5 for a first offence and £20 for a subsequent offence is prescribed for obstructing persons authorised by the Minister to enter land and secure compliance with his orders under section 100 (2) of the Agriculture Act, 1947, and section 22 (4) of the Prevention of Damage by Pests Act, 1949 (section 5).

Spring traps

From a day to be appointed a person will be guilty of an offence if he uses or knowingly permits the use of any spring trap other than an approved trap, or any approved trap for purposes for which it is not approved; or if he sells or offers for sale or has in his possession such a trap. The penalty is a fine not exceeding £20 for a first offence and £50 for a subsequent offence (section 8 (1)–(3)). Spring traps licensed by the Minister for experimental purposes will not be unlawful; nor will traps specified by him as being adapted solely for the destruction of rats, mice and other small ground vermin (section 8 (4), (5)).

The provisions of the Ground Game Act, 1880, s. 6, and the Prevention of Damage by Rabbits Act, 1939, s. 9, forbidding the setting of spring traps elsewhere than in rabbit holes, are replaced without alteration, except that the Minister may by regulations or by licences authorise their setting elsewhere (section 9).

It is an offence knowingly to use or permit the use of a rabbit infected with myxomatosis to spread the disease among uninfected rabbits. The penalty is a fine not exceeding £20 for a first offence and £50 for a subsequent offence (section 12).

Aliens

See EXPIRING LAWS CONTINUANCE ACT, p. 48, below.

Animals

SLAUGHTER OF ANIMALS (PREVENTION OF CRUELTY) (NO. 2) REGULATIONS, 1954 (S.I. No. 1584): operative December 1, 1954, July 1, 1955. The previous Regulations of 1954 (S.I. No. 1280 ; see [1954] Crim.L.R. 873) are revoked and replaced. More detailed provision is made concerning the slaughter of sick or disabled animals (regulation 15), and the age above which a person may be admitted in a knacker's yard while an animal is being slaughtered is reduced to fifteen (regulation 20).

There are a number of new provisions, relating mainly to the care of animals awaiting slaughter. The occupier of premises used for the confinement of such animals, defined as lairages, must ensure that the premises are suitable and so constructed that they provide proper shelter and may be thoroughly cleansed. Suitable equipment must be provided to contain the animals' fodder, which may not be deposited elsewhere, and bedding must be provided for the animals. The premises must be adequately ventilated and lighted (regulations 3, 7, 8).

The occupier of a slaughter-house or knacker's yard must ensure that the slaughter-house is so constructed that it may be properly cleaned and that it is adequately lighted (regulation 4). For the slaughter of any animal by the Jewish or Mohammedan method a casting pen of the Weinberg or Dyne type, or such other type as may be approved by the Minister of Food, must be used (regulation 14).

Horses

The lairage of a slaughter-house or knacker's yard in which horses are slaughtered must have permanently fixed partitions separating the horses and at least one loose box (regulation 22). No horse may be laired loose except in a field or a suitable loose box (regulation 23). No horse may be slaughtered in any place where there is a horse or the remains of any animal (regulation 24); in slaughter-houses or knacker's yards constructed after December 1, 1954, a separate room or bay must be provided for their slaughter (regulation 25).

The occupier of a slaughter-house or knacker's yard where horses are slaughtered must notify the local authority of every place where horses intended for slaughter are kept by him or on his behalf (regulation 26). He or, in certain cases, a duly appointed officer of the local authority must keep records of the animals or carcases received into the slaughter-house or yard; returns showing the total number of horses slaughtered, the place at which they were slaughtered, and the number of horses' carcases received during the year must be made to the local authority each January, beginning in January, 1956 (regulations 27–30). Records kept under by-laws containing similar information to that prescribed by the Regulations shall be deemed sufficient (regulation 31). Records must be produced for inspection at all reasonable times on request by an authorised officer of the local authority or of the Minister of Food (regulation 32).

Legal proceedings

Contravention of these Regulations is an offence, the penalty being a fine not exceeding £50 or imprisonment for not more than three months, or both. It is a sufficient defence if it is proved that such contravention was necessary to prevent physical injury or suffering to any person or animal (regulation 33). The court may, on conviction of the holder of a licence under section 57 of the Food and Drugs Act, 1938, cancel his licence (regulation 34).

FOOD AND DRUGS AMENDMENT ACT, 1954 (2 & 3 Eliz. 2, c. 67). Section 27, which came into operation on November 25, 1954, contains further provisions as to the restriction of private slaughterhouses and affects section 61 (2) of the Food and Drugs Act, 1938, and sections 4 (2) and 5 (1) of the Slaughterhouses Act, 1954.

See PESTS ACT, 1954, p. 45, above.

Armed Forces

CIVIL DEFENCE (ARMED FORCES) ACT, 1954 (2 & 3 Eliz. 2, c. 66): operative November 25, 1954. This Act provides for the training in civil defence of part-time National Servicemen, and provides that the duties of other members of the armed forces include civil defence and training therefor.

British Commonwealth

See EMERGENCY LAWS (MISCELLANEOUS PROVISIONS) (COLONIES, ETC.) ORDER IN COUNCIL, p. 50, below.

Continuance of Offences

EXPIRING LAWS CONTINUANCE ACT, 1954 (2 & 3 Eliz. 2, c. 69): operative November 25, 1954. The following provisions, *inter alia,* are continued in force until December 31, 1955: Aliens Restriction (Amendment) Act, 1919, s. 1 (continuance of emergency powers under Aliens Restriction Act, 1914, s. 1 (1)); Road Traffic Act, 1934, s. 1 (speed limit in built-up areas); Population (Statistics) Act, 1938; Education (Exemptions) (Scotland) Act, 1947. The following provisions are continued in force until March 31, 1956: Rent of Furnished Houses Control (Scotland) Act, 1943; Furnished Houses (Rent Control) Act, 1946.

The Prevention of Violence (Temporary Provisions) Act, 1939, which was continued in force until December 31, 1954, with regard to existing expulsion, registration and prohibition orders, expired on that date.

Courts-Martial

COURTS-MARTIAL APPEAL (AMENDMENT) RULES, 1954 (S.I. No. 1557): operative January 1, 1955. The period within which a person convicted by a court-martial, other than a person sentenced to death, may present a petition under section 3 (2) of the Courts-Martial (Appeals) Act, 1951, is reduced to forty days if the court-martial was held in the United Kingdom, and sixty days if held elsewhere. The length of the period within which a person who has not been notified that his petition has not been granted may appeal under section 3 (2) (*b*) now similarly depends upon whether the court-martial is held in the United Kingdom or not.

Defence Regulations

DEFENCE REGULATIONS ORDERS, 1954, Nos. 7 (S.I. No. 1478); 8 (S.I. No. 1479): both operative November 10, 1954; 9 (S.I. No. 1480): operative January 1, 1955; 10 (S.I. No. 1558): operative December 7. The following regulations of the Defence (General) Regulations have been amended or revoked:

47C (authority for certain aliens to act as master or officer of a British ship) revoked.
53 (requisitioning of property other than land) revoked.
55 (general control of industry) amended and future exercise limited.
55AA (powers of competent authorities as to the keeping of books, making of returns, entry and inspection) amended and future exercise limited.
55AB (price control of goods and services) amended and future exercise limited.
55F (safeguards for persons carrying on offensive trades closed under concentration arrangements) revoked.
56A (control of building and other operations) revoked.
68CB (provisions to facilitate lettings of parts of dwellings) revoked.
70 (traffic on highways) revoked.
88A (entry and search of premises, etc., to obtain evidence of offences) revoked.
Schedule 6 (control of building and other operations) revoked.
Regulations 2, 3 (3), (4) of the Defence (Patents, Trade Marks, etc.) Regulations, 1941, are revoked.

TRANSPORT CHARGES, ETC. (MISCELLANEOUS PROVISIONS) ACT, 1954 (2 & 3 Eliz. 2, c. 64): operative November 25, 1954. Regulation 56 (4) (*a*) of the Defence (General) Regulations, 1939, is revoked (section 8).

SUPPLIES AND SERVICES (CONTINUANCE) ORDER, 1954 (S.I. No. 1559): operative December 7, 1954; EMERGENCY LAWS (CONTINUANCE) ORDER, 1954 (S.I. No. 1560): operative November 24, 1954. The Defence Regulations set out in the White Paper (Cmd. 9309) are continued in force for a further year until December 10, 1955.

EMERGENCY LAWS (MISCELLANEOUS PROVISIONS) (COLONIES, ETC.) ORDER IN COUNCIL, 1954 (S.I. No. 1561): operative November 24, 1954. The governors of the Bahamas, Cyprus, Jamaica, Kenya, Leeward Islands, Trinidad and Tobago may by order provide for the continuation in force of Defence Regulations in their territories.

FOOD AND DRUGS AMENDMENT ACT, 1954 (2 & 3 Eliz. 2, c. 67): operative on day to be appointed. The Defence (Sale of Food) Regulations, 1943, are revoked except so far as they extend to Northern Ireland.

Food and Drugs

FOOD AND DRUGS AMENDMENT ACT, 1954 (2 & 3 Eliz. 2, c. 67): operative on day to be appointed. It is an offence to sell, offer, expose or advertise for sale for human consumption food rendered injurious to health by addition, abstraction or other process, and to subject food intended for sale to such treatment (section 1 (1), (3), (4)). The sale of drugs injuriously affected by any addition or abstraction is prohibited, as is such addition to and abstraction from any drug intended for sale (section 1 (2), (3), (4)). What has to be considered in determining whether an article is injurious to health is prescribed (section 1 (5)). In proceedings for an offence consisting of the advertisement for sale of any food or drug it is a defence for the person charged to prove that it is his business to publish or arrange for the publication of advertisements, and that he received the advertisement in the ordinary course of business (section 1 (6)). Sections 1 and 2 of the 1938 Act are replaced by section 1 (section 1 (7)). The defences available in proceedings under section 3 of the 1938 Act (prohibition of sale of food or drugs not of the nature, substance or quality demanded by the purchaser) are detailed in replacement of sections 4 (1)–(3), (5), and 5 of the 1938 Act (section 2).

The Ministers of Food and Health are empowered to make regulations for controlling the consumption and treatment of food, the use of substances in the preparation of food and the sale or importation of food which does not comply with the regulations (section 3), and in furtherance of these powers they may obtain particulars of certain food ingredients (section 4 (1), (2)). A person who improperly discloses particulars or information obtained for this purpose is guilty of an offence punishable on summary conviction by three months' imprisonment or £50 fine, or both, or on indictment by two years' imprisonment or £500 fine, or both (section 4 (3)). Provisions relating to the labelling and advertisement of food and drugs and the power to make regulations contained in regulations 1 and 2 of the Defence (Sale of Food) Regulations, 1943, and section 8 (1) (*b*) of the 1938 Act are permanently enacted (section 5).

The powers to make regulations as to food hygiene, sections 8, 13, 30 of the Act of 1938, are extended, and power is given to regulate the treatment and disposal of food unfit for human consumption (section 6). A person responsible for catering premises, who is convicted of an offence against these regulations may be disqualified for not more than two years from using those premises as catering premises, and he will be guilty of an offence if he breaks the disqualification order (section 7 (1)–(3)). Provision is made for the removal of disqualification (section 7 (4)–(6)).

The provisions governing the registration of certain premises, section 14 of the 1938 Act, are modified, and power is given to extend the provisions to premises used for other types of food business (sections 8, 9). Power is given to make regulations requiring hawkers of food and persons selling food from stalls or vehicles to be licensed by the local authority (section 10), and concerning the composition, sale, etc., of milk (section 11). Definitions concerning cream are amended (section 12).

Enforcement and penalties

There is provision for the establishment of a Food Hygiene Advisory Council (section 13). There are amendments of section 64 of the 1938 Act which relate to the food and drugs authorities charged with enforcing the Acts (sections 14, 15), and provisions about the enforcement of certain enactments and regulations (section 16), and the right of audience in registration proceedings (section 17). Provisions relating to the taking of samples amend and replace provisions of the 1938 Act (sections 19–21, 23). The power to enter premises is extended to certain ships and aircraft, and to vehicles and outdoor stalls (section 22), and such power may, in certain circumstances, be exercised by Ministers' inspectors (section 23). Power is given to port health authorities and food and drugs authorities to restrict the movement of imported food and to require information about the consignee of the food. Failure to comply with a direction and the making of misstatements are offences, but the special penalty prescribed by section 78 (3) of the 1938 Act shall not apply (section 24).

The time limits for the commencement of proceedings based on samples are extended to two months; in the case of milk the limits remain 28 days and 42 days (section 25). In future, the penalties for offences against the Acts of 1938 and 1950 and this Act, for which no special penalty is provided, will be a fine of £100 or three months' imprisonment or both, and for a continuing offence £5 a day (previously first offence £20 fine, subsequent offences £100 or three months or both) (section 26 (1)). The special penalty for selling food unfit for human consumption is abolished (section 26 (2)). The appropriate officers of corporate bodies are liable for offences committed with their consent or connivance or by their neglect (section 26 (3), (4)). It will be a defence to proceedings to prove that the contravention in question originated in Scotland or Northern Ireland and that the defendant used all due diligence to secure compliance with the relevant provisions (section 27).

There are miscellaneous provisions relating to the Board of Trade and their regulations (section 29). The Acts apply to the Crown (section 30) and, with certain modifications are to be construed together (section 34). Regulations and orders already made have effect as though made under this Act (section 36).

See SLAUGHTER OF ANIMALS (PREVENTION OF CRUELTY) (NO. 2) REGULATIONS, p. 46, above.

Game

See the PESTS ACT, 1954, p. 45, above.

Highways

OPEN-CAST COAL (HIGHWAY) ORDERS (REVOCATION) (NO. 3) ORDER, 1954: operative December 1, 1954. Several orders made by the Minister of Fuel and Power under regulation 16 of the Defence (General) Regulations, 1939, stopping up various highways are revoked.

Housing

See EXPIRING LAWS CONTINUANCE ACT, p. 48, above.

London

The following Orders affecting unilateral waiting have been made: S.I. 1954, Nos. 1545 (Westminster, Ilford, Kingston-upon-Thames, Ruislip–Northwood); 1546 (Ruislip–Northwood, Staines, Ealing, Leyton, Wandsworth, Wembley).

The following Orders have been made altering the streets in which the sale of goods from vehicles, waiting, loading and unloading are restricted: S.I. 1954, Nos. 1547 (Westminster, St. Pancras);

1548 (Enfield, Harrow, Beddington and Wallington, Ruislip–Northwood, Wembley, Woolwich).

Magistrates' Courts

The following Orders altering petty sessional divisions have been made: S.I. 1954, Nos. 1458 (Essex); 1481 (Shropshire).

Medicine

PHARMACY ACT, 1954 (2 & 3 Eliz. 2, c. 61): operative December 25, 1954. This Act consolidates a number of enactments relating to pharmacy. Sections 18–21 replace without alteration provisions relating to falsifications by the registrar, restrictions on the use of certain titles, and offences relating to certificates.

Merchandise Marks

See DEFENCE REGULATIONS (NO. 8) ORDER, p. 49, above.

Merchant Shipping

MERCHANT SHIPPING ORDERS, LOAD LINE CONVENTION (VARIOUS COUNTRIES) (S.I. No. 1461); SAFETY CONVENTION COUNTRIES (VARIOUS) (No. 3) (S.I. No. 1462): both operative November 12, 1954. The Load Line Convention has been acceded to by Korea and Switzerland and applied to Malaya. The Safety Convention has been accepted by Cambodia, Nicaragua, the U.S.S.R., Switzerland, Hayti, Egypt and Poland.

Official Secrets

OFFICIAL SECRETS (PROHIBITED PLACE) (NO. 2) ORDER, 1954 (S.I. No. 1482): operative November 15, 1954. Certain premises occupied by Her Majesty's Stationery Office in London, Wembley, Harrow, Bristol, Chadderton and Edinburgh are declared prohibited places for the purposes of the Official Secrets Act, 1911. The Order of October 7, 1926, which made similar provisions, is revoked, and so is a declaration of December 9, 1912, that part of Loch Long was a prohibited place.

Railways

TRANSPORT CHARGES, ETC. (MISCELLANEOUS PROVISIONS) ACT, 1954 (2 & 3 Eliz. 2, c. 64): operative January 1, 1955. The yearly accounts and returns which railway undertakings are required to make under the Railway Companies (Accounts and Returns) Act, 1911, are to be made in such form as may be directed by the Minister of Transport and Civil Aviation (section 10).

Road Traffic

TRANSPORT CHARGES, ETC. (MISCELLANEOUS PROVISIONS) ACT, 1954 (2 & 3 Eliz. 2, c. 64): operative November 25, 1954. The Minister of Transport and Civil Aviation may make regulations determining the number of seated and standing passengers to be carried in any vehicle. The penalty for contravention will be a fine not exceeding £20 (section 9). Such regulations have been made for public service and trolley vehicles, see below.

PUBLIC SERVICE VEHICLES AND TROLLEY VEHICLES (CARRYING CAPACITY) REGULATIONS, 1954 (S.I. No. 1612): operative December 7, 1954. The seating capacity of such vehicles is to be calculated in accordance with regulations for the time being in force under the Vehicles (Excise) Act, 1949, s. 3. The number of standing passengers in public service vehicles used as stage carriages or trolleys is limited to one-third of the seated passengers (if the vehicle is double-decked to one-third of the seated passengers on the lower deck) or to eight, whichever is less. The seating capacity must be clearly marked on the vehicle.

See EXPIRING LAWS CONTINUANCE ACT, p. 48, above.

Salmon and Freshwater Fisheries

SOMERSET RIVER BOARD (FISHERIES) ORDER, 1954 (S.I. No. 1457): operative November 3, 1954. The Board is given further powers with regard to fixing the annual trout close season for rod and line and erecting fixed engines.

Scotland

Agriculture

The Pests Act, 1954, applies with certain modifications to Scotland; see p. 45, above.

AGRICULTURE (SPRING TRAPS) (SCOTLAND) ORDER, 1954 (S.I. No. 1587): operative November 25, 1954. Spring traps other than those approved by the Secretary of State may be used for the purpose of killing or taking animals.

CONTROL OF SEEDS (REVOCATION) (SCOTLAND) ORDER, 1954 (S.I. No. 1541): operative November 24, 1954. The Order of 1940, which required seed producers and merchants to keep certain records, is revoked.

Expiring laws continuance

See p. 48, above.

Letters to the Editor

Local Authority Prosecutions

Sir,

It is refreshing to read Mr. Crompton's article in your December issue on Local Authority Prosecutions, for not a few local government officers seem amazed if ever anyone has the temerity to ask for their authority to commence proceedings and to appear on behalf of the authority.

Nevertheless, I am rather astonished at the wording and the implications of his parenthetic words at the top of p. 930. First of all, if it is "difficult to find any magistrate who is not . . . a mayor or an alderman," how, in view of the provisions of the Justices of the Peace Act, 1949, s. 3, can any process issued on the information or complaint of the particular local authority be heard in the court to which Mr. Crompton refers? The fact that a justice is a burgess matters not: Public Health Act, 1936, s. 304.

But my amazement grows at the statement "that the function of witnessing a complaint was not a judicial function." To start with, a justice does not witness a complaint. A complaint is made before him, he is entitled to satisfy himself that there are grounds for the issue or process, and he has a discretion to refuse process: see, for instance, *R.* v. *Wisbech JJ.* ((1890) 54 J.P. 743). Although there is nothing to prevent a mayor granting process on information or complaint laid by his own corporation, surely it is better to ask a mere burgess to do so.

Yours faithfully,
F. G. Hails,
Clerk to the Justices.

Dartford, Kent.

Obscenity and the Law

Sir,

In his learned article, entitled "Obscenity and the Law" ([1954] Crim.L.R. 817–33), Mr. St. John-Stevas discusses the difficulties with which the law of obscene libel bristles and criticises its administration. Yet, I submit, most of them are more apparent than real and admit of a reasonable explanation, when examined with due regard to the inherent features of this branch of the law and in relation to other branches. The rest of the difficulties could be solved quite satisfactorily, once it is conceded that the assault on the citizen's mind has to be met on the front of sexual morality no less strenuously than on that of public order. A line must be drawn somewhere between filth and literature as between licence and freedom; the vital question is: where, exactly?

True, as Mr. St. John-Stevas states, "obscenity is very difficult to define"; yet so is sedition. A glance at p. 1183 of the 33rd edition of Archbold will convince the doubtful. Both belong perforce to the category of relatively indefinite crimes—as opposed to the more or less definite, such as forgery and arson. Slightly amending Dicey's aphorism, I would submit that anyone has the right to write or say anything which a jury of twelve shopkeepers do not think it reasonable that it should not be said or written.

In contrast with Parliament which enacts general laws, a jury's verdict amounts to a *post factum* special law applicable to the particular case in hand. Yet we may note another quasi legislative function of the jury. In the same way that the judges, as " interpreters " of existing law, make new law, the juries, as " finders " of fact, abrogate unpopular laws and cause new laws to be enacted by Parliament, *e.g.*, the Treason-Felony Acts of last century. Indeed, even under our very eyes juries have procured the substitution of one motoring offence by another, and are now in the process of revolutionising the law of insurance against accident. According to time and circumstance, therefore, juries will place either a broad or a strict and narrow interpretation on the *Hicklin* test. This elasticity is inescapable, owing to the jury's response to the changing environment as well as the indefinite nature of obscenity.

It would obviously be convenient if a technical distinction were made between motive, intention and object; but even without it one would be quite safe in observing that the law of obscene libel is identical in principle with the law of contract. For when an agreement has been reduced to writing, the document or set of documents concerned speaks for itself, and the intention of the parties must be gathered from its terms and from these alone. Nor is the opinion of experts admissible in the construction of such documents—foreign and peculiar English terms excepted. And since these rules of law have worked well in commercial transactions, I, for one, see no earthly reason why they should break down when applied to sexual morals.

However, English law rightly differentiates between crime and contract. First, whether a tendency to deprave and corrupt may or may not be inferred from the alleged obscene libel, is a question of fact for the jury; whereas the interpretation of a written agreement is a question of law exclusively within the judge's province. Then the accused, as distinct from the defendant in a civil action on contract, is permitted to give evidence of his own opinion of the alleged obscene libel, and his counsel is entitled to try to persuade the jury that it is the right one for them to adopt.

Quoting a passage from the summing up by Stable J. in the case of *Secker and Warburg*, Mr. St. John-Stevas comments (p. 826): " Either this is a misdirection or the point of view put forward in this article represents the true state of the law." That the passage in question is not a misdirection but is perfectly consistent with the learned judge's approval of the *Hicklin* dicta, will be apparent when it is pointed out that no evidence was called on behalf of the author in *Secker and Warburg*. So that when the learned judge directed the jury " to consider whether in this the author was pursuing an honest purpose and an honest thread of thought," he expected them to try to deduce the author's purpose exclusively from the publication under review.

Adverting to the passage from the judgment of the Lord Justice-General in *Galletly* v. *Laird*, which was approved by Lord Goddard in *R.* v. *Reiter*, Mr. St. John-Stevas states (p. 829): " Since obscenity is essentially a relative matter—what is considered obscene at one time or place not being necessarily so at another—this statement is open to criticism." Yet in a trial for sedition, speeches similar to that of the accused, made without objection in the same place or elsewhere, on the same or on some other occasion, before the same or a different audience —by persons other than the accused—cannot be cross-examined upon or adduced in evidence on his behalf, although sedition (like obscenity) is essentially a relative matter. There is a reason for this, as good as it is simple; such speeches could not help the jury or the magisterial bench concerned to decide whether or not the particular speech under consideration is seditious; any more than an examination of similar publications could be of any avail in determining whether the particular publication which is the subject of the proceedings be obscene or not. Indeed, the relative character of the crime seems to be utterly irrelevant; for no one tried for larceny would be permitted to set up as a defence the allegation that similar acts are or have been committed by others with impunity—except, of course, under a claim of right. Otherwise, it would be difficult, if not impossible, to convict offenders of any crime, let alone obscene libel: e.g., on the trial in respect of book Z, books X and Y would be exhibited by the defence; and if proceedings were first taken in respect of X, then Y and Z would be exhibited—when in fact all the three books may tend to deprave and corrupt. For there is no guarantee that because so far a book has been allowed to circulate freely, no proceedings will be instituted in respect of it. As a matter of historical fact, most of the books which circulated freely at the time, and with which the defence in the case of *Reiter* sought to allege that its own publications compared favourably, have since been the subject of prosecution—and successful prosecution!

Nevertheless, there is general dismay at the fact that a classic like *The Decameron* should have been singled out for proscription, and that a bench of magistrates could be persuaded to condemn it. Moreover, it disturbs ordinary people to learn that acquittal in one court cannot be pleaded in answer to a charge preferred against the same persons, in respect of the same book or picture, before another court in the next district or county. Similarly, the public contemplates with amazement the possibility of an adverse verdict, returned in respect of one book or picture, being followed, on its republication, by the acquittal of the same persons in the same or any other court. Clearly, the laudable zeal of cleaning up art and literature, unless reasonably harnessed, is liable to degenerate into panic and persecution. To bring order into such proceedings, which involve morals and liberty—two of the four subjects about which the people of this country are most sensitive—I respectfully suggest:—

(a) That prosecutions for obscenity, like those for sedition, should not be instituted at the discretion of a local or subordinate authority, but in the name of the Attorney-General or at the instance of the Director of Public Prosecutions.

(b) That publishers adopt a system of selection, similar to that which obtains in the film industry, whereby certain books would be distinctly marked to indicate that their circulation is restricted. A book could be so marked either at the time of its publication or after a successful prosecution in respect thereof. It would then be available only on the conditions specified on its cover.

Yours faithfully,
JOSEPH YAHUDA,
Barrister-at-Law.

Temple.

Books and Periodicals

Reviews:

Crime and the Services. By John C. Spencer, M.A., PH.D., J.P London: Routledge & Kegan Paul, Ltd. 1954. xii and 288 and (bibliography) 12 and (index) 6 pp. (28s. net.)

Dr. Spencer undertook this carefully documented research to consider the influence of the Services on the delinquent and the non-delinquent. His general conclusion after interviewing, investigating records and studying available statistics, is that the influence differs according to the personality of the individual and his previous environment. Service life is neither a panacea for all personal difficulties, nor a simple explanation of the increase in post-war crime.

Dr. Spencer emphasises the importance of the individual's early childhood in his attitude to what often seems soul-destroying boredom. He also notes the close connection between desertion and criminal behaviour. This book, a little too full of relevant footnotes, is a useful contribution on a much-discussed subject which has not previously been thoroughly sifted.

JEAN GRAHAM HALL.

European Seminar on Probation. United Nations Publication, New York. London: H.M.S.O. 1954. vi and 237 pp. (11s. net.)

Practical Results and Financial Aspects of Adult Probation in Selected Countries. United Nations Publication, New York. London: H.M.S.O. 1954. vii and 112 pp. (5s. net.)

The Indeterminate Sentence. United Nations Publication, New York. London: H.M.S.O. 1954. v and 83 and (bibliography) 9 pp. (5s. net.)

Parole and After-Care. United Nations Publication, New York. London: H.M.S.O. 1954. 86 pp. (5s. net.)

Modern methods in the treatment of convicted persons constantly attempt to preserve a balance between the interests of the community and those of the individual. Innovation and experiments originate in the juvenile field and gradually spread to that of adults. Recent surveys of the United Nations on probation, parole and after-care, and the use of the indeterminate sentence, show these trends.

Probation (that effective device for the rehabilitation of the offender while allowing him to remain a productive member of the community) is as yet little used for adults in most countries. The need for careful selection cannot be over-emphasised, but the cautious should recollect the strong authoritarian role of the court and its powerful legal sanctions in the background. The United Nations, through the Department of Social Welfare, gives an excellent survey of practical results, with the encouraging knowledge that in the penal systems reviewed, *i.e.*, United Kingdom, the Scandinavian countries, the Netherlands, and the United States, there are more offenders under the supervision of a Probation Officer than prisoners in custody on conviction. The rates of probation vary widely in the different countries.

The crucial tests of the results of probation, like those of other forms of penal and correctional treatment, must be in terms of successful social adjustment, re-convictions and sentences.

The importance of parole lies in the fact that it enables a prisoner to make contact with the outside world before the expiration of his sentence. The surveys show that parole and indeterminate sentencing now tend to supplement each other. The United States is the chief exponent of the indeterminate sentence and may be considered its true home. In Europe generally, the development of conditional release operates to convert a fixed term of imprisonment into an indeterminate sentence.

The English prison administrators recently stated that in their view the indeterminateness involved in preventive detention creates an element of unrest and discouragement for the offender. Exponents of the indeterminate sentence point out that it is the logical outcome of the individualisation of punishment. All these views are cogently expressed in these helpful and far-sighted surveys.

JEAN GRAHAM HALL.

Nine Troubled Years. By Viscount Templewood, D.C.L., LL.D., LITT.D. London: Collins. 1954. 436 and (index) 12 pp. (25s. net.)

During the nine years with which this book is concerned the author held six high posts in the government of the day and for two years was Home Secretary. One of a family which included such great penal reformers as Samuel Hoare, the author's great-great-grandfather, and Elizabeth Fry, it was perhaps fitting that he should launch the Criminal Justice Bill on its path to the statute book which it eventually reached in 1948. Its path might have been shorter had not Lord Templewood refused to drop from it the clause which abolished judicial flogging, but he at least had the pleasure of helping an almost identical Bill through to its final stages after the war.

In considering the prerogative of mercy Lord Templewood feels that the questions of life and death should not be delegated to any fellow Secretary of State. Possessing neither the Home Secretary's experience nor special information the Secretary of State to whom the task of advising on the use of the prerogative is delegated can do little more than act as a rubber stamp in accordance with the recommendations of the Home Office. But he does consider that " as long as there is a death penalty [the Home Secretary] is probably the best court of final appeal, however deficient it may be." Since leaving the Home Office the author's views have crystallised in favour of the total abolition of the death penalty.

Of necessity this must be a review from a specialist point of view, but the rest of this book is extremely interesting whatever view one may take of some of the principal British actors on the international stage from 1931 to 1940.

P. A.

Smuggler's Circuit. By Denys Roberts. London: Methuen & Co., Ltd. 1954. 218 pp. (10s. 6d. net.)

Described by the publishers as " a story of justice perverted and lawlessness (of a purely technical nature) triumphant," this is a first novel by a member of the bar. Judged as a story, we incline to say that it fails to come off, but to readers of this *Review* its legal background may compensate for this. Mr. Roberts' sense of humour is somewhat uneven, extremely amusing passages describing exchanges between counsel and judge being interspersed with descriptions of fantastic and improbable incidents.

The best part of the book lies in the descriptions of circuit life as seen by the Judge's Marshal. We think most of our readers will derive pleasure from reading the book, and hope that Mr. Roberts will do better next time.

M. W. M.

Road Traffic Law. By J. L. Thomas. London: Police Review Publishing Co., Ltd. 1954. 127 and (index) 7 pp. (3s. net.)

This small but useful book contains in a summary form the provisions of statutes and regulations concerning road traffic. The first part deals with the law relating to a number of specific vehicles and the second with the law on general subjects such as lighting, insurance and police powers. It is of great value as a reference book.

V. W.

Books Received:

The Slaughter of Animals Handbook. By Basil James, Barrister-at-Law. London: Hadden, Best & Co. 1954. xxvii and 94 and (index) 9 pp. (7s. net.)

Handbook of Citizen's Rights. London: National Council for Civil Liberties. 1954. 47 pp. (2s. 6d. net.)

International Review of Criminal Policy. Nos. 1, 2, 3, 4. United Nations Publication, New York. London: H.M.S.O. 1952, 1953.

Articles:

Cambridge Law Journal, November, 1954.
 The Army Act and murder abroad, p. 232.

The Magistrate, Vol. 10.
 Censorship and justice, p. 197.

Law Journal, Vol. 104.
 Evidence of spouses in criminal law, p. 756.

Law Times, Vol. 218.
 Dealing in game, p. 272.
 Magisterial topics, p. 291.

Justice of the Peace, Vol. 118.
 Obscene publications, pp. 709, 725.
 Taking depositions outside a magistrate's area, p. 726.
 Remand for medical examination, p. 758.

Police Review, Vol. 62.
 Protection of Birds Act, 1954, p. 872.

Police Chronicle.
 The unwilling witness, Nov. 12, 1954, p. 5.
 " Taken into consideration," Nov. 19, 1954, p. 9; Dec. 3, 1954, p. 4.

THE
CRIMINAL LAW
REVIEW

Editors
JOHN BURKE and PETER ALLSOP, M.A.
Barristers-at-Law

Editorial

Freedom and politics

A case of considerable importance for all who hope for political asylum in the United Kingdom was that of the seven Polish seamen. In the article on page 75 Mr. J. H. Craine, Chief Clerk at Bow Street Magistrates' Court, where the Chief Metropolitan Magistrate sits, gives a full account of all the proceedings in the case. The right of representation of a foreign power seeking extradition orders and the Chief Magistrate's view of his duties under the Extradition Act, 1870, are covered and the judgments in the Queen's Bench Divisional Court, where writs of habeas corpus were sought and issued, are fully reproduced.

Dangerous pedestrians

It has often been regretted that dangerous and careless pedestrians are not controlled by the Road Traffic Acts to the same extent as dangerous and careless motorists. Whilst the matter is to some extent covered by the new Road Traffic Bill that is not yet law so that the prosecution of a pedestrian must be commenced, if at all, under other legislation. In the North London Magistrates' Court proceedings were brought against two defendants, Bergliter and Hardy, under section 78 of the Highway Act, 1835; they were accused of having "unlawfully by misbehaviour interrupted the free passage of a carriage on the highway."

It was alleged that the defendants had walked over a police-controlled crossing when a constable had given right of way to a motor-van. Their defence was that they thought that the policeman was giving right of way to pedestrians, but this was not accepted; they were granted an absolute discharge on the payment of 30s. costs.

Infangenetheof, hamsocn and blodwite

Combining two petty sessional divisions would not appear to be a difficult task, but it is a matter which raises grave questions of precedence. When the divisions of Dengie and Maldon were combined, the name given to the new division was Dengie and Maldon, but it appears for historical reasons that perhaps it should have been Maldon and Dengie. Reference may be made to a charter granted in 1171 to the Borough of Maldon confirming the borough's existing rights of infangenetheof, hamsocn and blodwite and mentioning nam, graff, fythwythe and grethbeg. The hundredgemot of Dengie boasts no such charter and indeed lost its criminal jurisdiction before 1327, although one must not lose sight of the fact that its Hundred courts were apparently ordained by King Alfred.[1]

Horror comics

The Government are considering the possibility of introducing legislation to deal with the problem of horror comics. Some reluctance is felt at taking this step and it is proposed that the application of such legislation shall be carefully restricted to certain types of pictorial publication.[2] The drafting of a suitable Bill will undoubtedly cause much difficulty. A draft Bill was recently submitted to the Home Secretary by the Comics Campaign Council which was claimed to follow in some respects similar laws already existing in New Zealand and Canada. Its proposed definition of a crime comic, however, gives rise to some doubts; it includes any magazine, periodical, or book which exclusively or substantially "comprises matter depicting pictorially any or all of the following:—The commission of any crime or crimes, real or fictitious; incidents calculated to inspire or sustain hatred against any race, nation, or religion; incidents calculated by reason of undue emphasis on matters of sex, horror, crime, cruelty, or violence to have a harmful effect upon the minds of children under the age of 18 who might read them."

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[1] See H. C. Debates, Vol. 535, col 1097; Dec. 9, 1954.

[2] H. C. Debates, Vol. 535, col. 1090; Dec. 9, 1954.

Public lectures

Under the title "General Aspects of Criminal Law" Professor Jerome Hall, PH.B., JUR.SC.D., S.J.D., of the University of Indiana is giving seven lectures at King's College, London, on Fridays at 5.0 p.m. Professor Hall in his first lecture on January 28 considered "Three Phases of Criminal Law—Form, Value, Fact." The dates and titles of his remaining lectures will be as follows:

February 4, Ethics of Criminal Law—Negligence, Constructive Malice, Strict Liability;
February 18, Ignorance of Fact and Ignorance of the Law;
February 25, Criminal Attempt;
March 4, Mental Disease and Criminal Responsibility;
March 11, Definition of Crime;
March 18, Punishment and Criminal Law.

Parliament

The hanging of Mrs. Christofi caused some public concern because of reports of her insanity. The Home Secretary refused to depart from the established precedent of not disclosing the advice given to him or his reasons for not advising the exercise of the Royal Prerogative, but he did answer a number of questions about the case in the Commons. After the dismissal of Mrs. Cristofi's appeal to the Court of Criminal Appeal, the Home Secretary appointed three doctors to examine her and they reported that Mrs. Christofi did not suffer from any mental abnormality which would justify them in making any recommendation on medical grounds relevant to the question of a reprieve. After this report there was no ground for submitting the case to the Court of Criminal Appeal under section 19 of the Criminal Appeal Act, 1907; there was nothing the court could have done on such a submission. The Home Secretary refused to receive a deputation of members who wished to discuss the proposed hanging, although as an exceptional step he did see a member of Parliament who had acted as counsel for the defence (H.C. Debates, Vol. 535, col. *236*; Dec. 20).

Soliciting

Not many complaints have been received in the Home Office about soliciting in London during the past few months. Police patrolling in the West End has been intensified and the number of arrests has increased considerably. The Commissioner of Police is doing all that he can within his present resources to deal with the problem, but no amendment of the law can be considered until the report of the Departmental Committee on homosexual practices and prostitution is published. The committee is at present taking evidence (Vol. 535, col. 1092 ; Dec. 9).

School crossings

School-crossing patrols in the Metropolitan area are trained by experienced police officers ; outside that area such training is a matter for the local authority, but in many cases police officers are used (Vol. 535, col. 1095 ; Dec. 9).

Prisons

The Prison Commissioners' authorised programme of new building includes two secure training prisons, each for about 300 men, four Borstals, two for boys and two for girls, and a special psychiatric prison. The first new security prison near Hull is being built, but in the case of the second difficulties in obtaining planning clearance have held up progress. Designs for the psychiatric prison are now being considered. At least one old prison has been reopened and other buildings are being used temporarily as prisons (Vol. 535, col, 1102 ; Dec. 9).

During the last five years eighteen approved schools have been closed and two reduced in size. Two more are to be closed at the end of this month (Vol. 535, col. 1103; Dec. 9).

The psychiatric treatment of prisoners has been extended. More time is given to such treatment by visiting psychotherapists and arrangements have been developed by which psychiatrists working under regional hospital boards interview short-sentence prisoners with a view to the continuance of treatment after release. Prison medical officers are encouraged to give minor psychiatric treatment where this is needed (Vol. 535, col. *57* ; Dec. 9).

About six Borstal girls go to Holloway prison every year for psychiatric treatment ; they usuually stay about two or three months and return to Borstal training when they have received the maximum benefit from their treatment. If they are not considered fit they may be kept at Holloway for further medical observation or sent to an outside hospital for further treatment. Although the Home Secretary recognises the objections to sending such girls to Holloway, it would be difficult at present to provide a special place for the treatment of so few (Vol. 535, col. 1091 ; Dec. 9).

Police pensions

The Home Secretary is considering amendments to the police pensions regulations as a result of the increased benefits authorised by the National Insurance Act. Police widows whose husbands died before July 5, 1948, will benefit by any increases in pensions based on the new rates (Vol. 535, col. 1101 ; Dec. 9).

Police exhibitions

Two international art exhibitions are to be held in Paris at the "Grand-Palais" from June 17 to July 16, 1955. These are entitled "The Police Exhibition," and "Forgeries in Art" and the organisers ask that police officers who would like to exhibit their work should send to them any paintings, designs, engravings, sculpture, ceramics, ornamental objets d'art, literary works, photographs, etc. Articles for exhibition should be sent to M. Theus, Ministère de l'Intérieur, Cité des Ternes, 60 Bld. Gouvion, Saint-Cyr, Paris 17 ème *before May* 15, 1955.

Judicial appointments

Mr. O. C. Barnett, C.B.E., has been appointed Vice Judge Advocate General of H.M. Forces, Mr. E. H. V. Harrington, Assistant Judge Advocate General and Mr. E. R. Mills, a Deputy Judge Advocate.

Lieut.-Colonel J. F. E. Stephenson has been appointed Recorder of Bridgwater and Mr. G. S. Waller, Q.C., Recorder of Sunderland.

Mr. Kenneth Barraclough has been appointed a Metropolitan Magistrate.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Review. They should be sent to the EDITOR, *Criminal Law Review,* 3 CHANCERY LANE, LONDON, W.C.2. *Every effort will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Police Control of Intending Criminals

By GLANVILLE WILLIAMS, LL.D.
Quain Professor of Jurisprudence in the University of London

The Law of Attempt

Circumscription of the law of attempt

In a rational system of justice the police would be given every encouragement to intervene early where a suspect is clearly bent on crime. Yet in England, if the police come on the scene too early they may find that they can do nothing with the intending offender except admonish him.

This is largely because of the rule that an attempt, to be indictable, must be sufficiently " proximate " to the crime intended, and because of the very strict interpretation of this rule by the judges. An illustration is supplied by the case of *Hope* v. *Brown* [1954] Crim.L.R. 211, where a butcher's manager was found by a Ministry of Food inspector with tickets in his drawer showing an excessive price for meat. It was held that the butcher could not be convicted of attempting to sell meat in excess of the permitted price because he had not yet applied the tickets to the meat. Lord Goddard C.J., in categorising the case as one of remote preparation rather than proximate attempt, said: " There might be a sudden change of heart, or an intervention by the master, which would have prevented any attempt being made to sell this meat to the customers. In all these cases where it has been held that there has been an attempt, the court has always found that the crime would have been committed but for the intervention of someone." This passage is somewhat difficult to follow, for it seems to begin by saying that there was no proximate attempt, *inter alia,* because there might have been an intervention by the master, but then goes on to say that there will be an attempt if the crime would have been committed but for the intervention of someone. Presumably the master is " someone," so that in this respect the latter part of the passage seems to contradict the first. Perhaps the learned Chief Justice meant to place emphasis upon the other point, that the act was not proximate because there might have been a sudden change of heart. If so, this is the first case in which such a test has been suggested;

and the test seems to be such an indulgent one as to leave the law of attempts with little to do. In most cases of attempt, where the accused has been interrupted in his nefarious plan, it is impossible to affirm with certainty that he would not have repented if he had been left alone. But it seems to be an undue restriction upon the law to allow this benevolent speculation to exclude an attempt.

No such restriction appears in another attempt case which had been decided in the Courts-Martial Appeal Court a few weeks previously: *Miskell* [1954] Crim.L.R. 137. There the defendant had by indecent overtures and suggestions made clear his criminal purpose of inducing a boy to commit an act of gross indecency with him. He then arranged to meet the boy, and at the meeting suggested that they should go for a walk. The police thereupon arrested the defendant, who later told them: "Well, what the boy said about Saturday night is all true, but I only met him tonight in order to put him off. I had no intention of doing what I suggested." On appeal from conviction of the offence of attempting to procure an act of gross indecency with the boy, it was held that the acts done by the defendant (meeting the boy and suggesting that they take a walk) were capable in law of amounting to an attempt to procure. This decision accords with common sense: yet it could have been said, just as much as in *Hope* v. *Brown*, that there was a theoretical possibility of the defendant repenting before the act of indecency was actually committed. He had not put it out of his power to repent and frustrate his own plan.

Perhaps the explanation of the decision lies in the interpretation of the word "procure" as used in the statute (the Criminal Law Amendment Act, 1885, s. 11). Hilbery J., delivering the judgment of the court, said: "It is important to bear in mind that the question is not whether this invitation and meeting in the circumstances amounted to an attempt to commit an act of gross indecency. They could not be said to be that. The question is whether these acts . . . were acts to procure the commission of that offence. . . . It is not a question whether there was an act of procuring but whether there was an act which was an attempt to procure." The legal meaning of the word "procure" is not very clear, but in the present context it seems to be a synonym for "incite." If so, the decision means that the accused was guilty of attempting to incite. Yet he had not yet reached the stage of inciting the boy to commit the offence, nor had he attempted to utter words of incitement. He was, in one sense, preparing the opportunity for an incitement. And, as said before, he might theoretically have repented later on and not uttered any incitement at all.

It is not intended by this comment to cast any doubt upon the decision in *Miskell*, which is a salutary one and in line with earlier authority on the solicitation of offences of indecency (*Cope* (1921) 16 Cr.App.R. 77; *cf. Honor* [1918] N.Z.L.R. 510).

The difficulty caused by the judgments in the various "proximity" cases is to know how they help to forecast the decision of a court in a novel situation. Almost all the judgments content themselves with elaborate tautologies, reiterating in an infinite variety of language the basic rule that the attempt must be "proximate" and not "mere preparation," but furnishing no helpful definition of the meaning of these terms. Where a test is indicated by the judges it turns out on examination to be useless. Thus Byrne J. in *Hope* v. *Brown* added his own approval to Stephen's test, which had often been cited in judgments before. "An attempt to commit a crime is an act done with intent to commit that crime, and forming part of a series of acts, which would constitute its actual commission if it were not interrupted." This definition, notwithstanding its judicial commendation, is too narrow, because it is now settled that one may attempt a crime by impossible means, in which case the attempt is doomed to failure quite apart from interruption. It is, also, too wide, because many acts that have been held to be mere preparation were part of a series of acts that would have constituted the actual commission of the crime if it were not interrupted. Byrne J. said: "When one examines the facts in the present case, it appears to me that the respondent's acts were not interrupted because the time had not arrived for their completion." Thus Stephen's test is to be qualified by adding the proximity rule, which according to the learned judge means that the time must have arrived for the completion of the series of acts leading to the crime. Applying this test to *Miskell*, the court must have thought that the time had arrived for the act of procuring the indecency at the beginning of the walk. Yet the probability is that the accused did not intend to solicit the indecency until some time later. He had met the boy at the station, and evidently intended to walk to a park or forest before making his final suggestions.

It is easy to tear judgments to pieces for their failure to define the indefinable, as the notion of proximity is. What is more important is to consider whether the actual working of the law is satisfactory. It is respectfully submitted that in general the notion of proximity is applied with undue strictness, so that it has the effect of penalising promptitude by the police and enforcement officers in performing their functions. One is led to ask whether there is any real need for the requirement of proximity in the law of attempt. Quite apart from this requirement, it must be proved beyond reasonable doubt that the accused intended to commit the crime (*cf. People* (*Att.-Gen.*) v. *Thornton* [1952] I.R. 91), and that he did some act towards committing it. If only a remote act of preparation is alleged against him, that will weigh with the court in deciding whether he had the firm criminal intention alleged against him. If, however, the court finds that this intention existed, is there any reason why the would-be criminal should not be dealt with by the police and by the criminal courts? To pursue this question, however, would be to enter the field of law reform: the restriction of the present law of attempt is well settled. Something else will be said on the question of law reform after the discussion of the Vagrancy Act.

Arrest for attempted crime

The law of arrest for attempted crime is in an even more unsatisfactory condition than the law of attempt. It is true that the police and other persons can, according to ancient authority, arrest for attempted felony as much as they can arrest for the felony itself ([1954] Crim.L.R. 421), and can also arrest for a breach of the peace that is reasonably feared. But the uncertainty caused by the proximity rule operates with particular hardship upon the arrester, because of the further rule that ignorance of the law (in the sense of ignorance of the limits of the power of arrest, or of the criminal law) is no excuse. The question whether or not an act is sufficiently proximate to be an attempt is treated as one of law, not of fact; consequently a policeman who arrests for attempted felony, guessing wrongly on the proximity issue, is liable in damages. It may be a consolation to him to know that the damages will probably be minimal, and will in any event be met out of police funds.

It might be natural for a police officer to suppose that when a statute empowers him to arrest a person found committing an offence, he is empowered to arrest one endeavouring to commit it. This, however, is not the law: the offence must actually be committed, and arrest for mere attempt is not justified. Thus although the Larceny Act, 1916, s. 41, allows arrest of those found offending under the Act—including, therefore, an arrest for the misdemeanour of obtaining by false pretences—it does not allow an arrest for an attempt to obtain by false pretences, which is a misdemeanour by virtue of the common law doctrine of attempt (*Mathews* v. *Biddulph* (1841) 3 M. & G. 390). There is in fact a general mode of construction that a statute authorising arrest for crime does not authorise arrest for an attempt to commit the crime without express words (*Leete* v. *Hart* (1868) L.R. 3 C.P. 322). Yet a person caught in the act of attempt may be just as dangerous as one who completed what he intended to do. This curious hiatus in the law is only partially filled by other rules, the principal stop-gap in practice being certain provisions of the Vagrancy Act, 1824.

Offences of being "found" in certain places

Among the miscellaneous provisions of section 4 of the Vagrancy Act are the offence of being "found" in certain places for an unlawful purpose and the offence committed by suspected persons who loiter with intent to commit felony. Section 6 gives a general power of arrest to all persons in respect of persons found offending against the Act. There are also certain other statutory offences of being "found."

Places to which the offences apply

The places specified in the Vagrancy Act are: dwelling-house, warehouse, coach-house, stable, or outhouse, or any enclosed yard, garden or area. These words have a technical meaning which is not always what might be expected. The legal definition of a dwelling-house requires that someone should habitually sleep there; consequently a house that has been left unoccupied with a view to sale, or that has been recently bought and not yet occupied, is not protected by the provision. A warehouse must be used in trade, not in agriculture (*Borley* (1844) 8 J.P. 263), and it would probably not now be held to include a part of a shop to which the public have access. It is problematical whether "coach-house" now includes a garage. An "outhouse" must be closely connected with a house (and, it seems, must be physically connected with it, as by a wall); a building in a field is not an outhouse. Then as to the words "enclosed yard, garden or area," these at first sight may seem to be very wide, but they will probably be construed to mean only the enclosed ground used with a dwelling-house (*Knott* v. *Blackburn* [1944] K.B. 77).[1] Apart from warehouses, therefore, the provision cannot safely be taken as applying to anything other than dwelling-houses, with the land and buildings usually enjoyed with them.

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[1] See *R.* v. *Armstrong* [1954] Crim.L.R. 387.

This provision in the Vagrancy Act is supplemented by one in the Larceny Act, 1916, s. 28 (4), which makes it a misdemeanour to be found by night in any building with intent to commit felony therein ; a person so found may be immediately apprehended by any person (section 41). Thus a person found in any building (even a shop, cinema, theatre, or public house) may be summarily arrested, but only if he is found during the statutory night-time (9 p.m. to 6 a.m.) and has an intent to commit a felony, such as larceny.

Interpretation of statutory terms : fact or law ?

A question of some importance for one who arrests under these provisions is whether the meaning of the various terms used in the statute, *e.g.*, " warehouse " or " outhouse," is a question of fact or a question of law. If it is a question of fact, the arresting officer's reasonably mistaken interpretation will excuse him if he is empowered to arrest on reasonable suspicion of the offence. But if the interpretation of the statute is a question of law, his mistake as to this, being a mistake as to the legal limits of the power of arrest, will not excuse him from liability for the illegal arrest.

It is generally supposed that the interpretation of a statute is a question of law for the judge, not of fact for the jury. To apply this theory strictly in a criminal case, the judge would have to require the jury to return a special verdict finding the facts, and he would then have to determine whether these facts fall within the statute. In practice this is not done, and it would, indeed, be regarded as an invasion of the province of the jury to do it. What happens is that the judge gives the jury a general direction on the meaning of the words in the statute and decides whether there is evidence that the thing or matter in question falls within these words. The jury then decide whether it does fall within it (*e.g.*, *Hammond* (1844) 8 J.P. 617). This procedure makes the question look as though, in a criminal case, it is one of fact. On the other hand, a Divisional Court will decide such questions on a case stated as though they are questions of law (*e.g.*, *Knott* v. *Blackburn* [1944] K.B. 77).

This much, at least, seems clear, that if the facts are such that a judge will direct a jury that they do not fall within the statute, any arrest which has proceeded on the assumption that they do fall within the statute must be vitiated by a mistake of law. For this reason, it is of some importance for the police to realise the limited meaning attached by law to words like " outhouse " and " area " which may seem at first sight to be of broad application.

The meaning of being "found"

Under both the Larceny Act and the Vagrancy Act the offender must be "found" in the building or other premises in question. It was held in *Thomas* v. *Powell* (1893) 57 J.P. 329 that a person was "found" unlawfully on licensed premises during closing hours (within the meaning of a Licensing Act now repealed) when he was seen to go into the premises and to come out again with a bottle of gin. This case was not cited in the more recent case of *Lumsden* [1951] 2 K.B. 513, when it was held that to be "found" in a building, within the meaning of the Larceny Act, 1916, s. 28 (4), the accused must have been seen in it; it is not enough that he is seen emerging from the door. In this state of the authorities, the only safe course is not to arrest in such circumstances, unless the arrest can be justified under some other provision. Where a person is seen running out of a building in suspicious circumstances, an arrest would in any event be justified at common law, on reasonable suspicion of the felony of larceny.

In one respect the statement of the law in *Lumsden* is almost certainly too narrow. Cassels J. said that the accused was not found in the building because he was not seen in it; and similarly the Court of Criminal Appeal thought on another occasion that the word "found" in section 7 of the Prevention of Crimes Act, 1871, meant "discovered" or "seen" (*Goodwin* [1944] K.B. 518 at 523). On neither occasion was it necessary to consider discovery otherwise than through the sense of sight, but it is submitted that perception through any of the senses is sufficient. American cases on the concept of "presence" allow all the bodily senses to be used, and there is some English authority to the same effect. For example, in *Kirkin* v. *Jenkins* (1863) 32 L.J.M.C. 140, the presence of the defendants in the house seems to have been discovered by listening through a locked door, and two of them were not observed at all; yet a conviction of being "found" under the Vagrancy Act was not challenged on this point.

To be found "in" a building the offender must be found wholly or at least effectively inside it; the fact that he is trying to get in, and has his hand through the window for the purpose of pulling himself inside, is insufficient (*Parkin* [1950] 1 K.B. 155 (C.C.A.)). Conceivably, however, it might be held, on the analogy of the rule for "entering" in burglary, that if the accused puts his hand in for the purpose of effecting his ulterior intention, *e.g.*, for pulling an article off a table near the window, this is equivalent to being in the building.

The person who does the finding need not himself be in the place in question (*per* Cassels J. in *Lumsden* [1951] 2 K.B. 513 at 515 (C.C.A.)) ; thus he may see the accused in a building through the window. The " finding " need not be a surprise to the finder. The person " found " need not be hidden in the building, and he may even have entered it after the finder (*Davis* v. *Sly* (1910) 26 T.L.R. 460, a case on the Betting Act, 1853, s. 11). Provided that the offender is perceived in the building or other place, he may be taken on fresh pursuit before he has left the neighbourhood, even though at the time of apprehension his unlawful purpose is wholly ended. Such an arrest is for legal purposes the same as if made at the beginning of the chase (*Howarth* (1828) 1 Mood. 207 (C.C.R.)). The same rule probably applies even though the offender has escaped from the neighbourhood, if the chase is continuous. It is not clear whether the power of arrest is wider still, not being limited to fresh pursuit. Some dicta state generally that an arrest need not be at the place where the offender is " found," without expressing any restriction as to fresh pursuit (*Moran* v. *Jones* (1911) 104 L.T. 921, *per* Bankes and Bray JJ. (Vagrancy Act); *Goodwin* [1944] K.B. 518 (C.C.A.) (Prevention of Crimes Act); *Lumsden* [1951] 2 K.B. at 515 (C.C.A.) (Larceny Act)). However, in the absence of an express decision this wider interpretation of the power of arrest cannot be taken as settled. It is true that, on a literal interpretation, a statute which empowers the arrest of one " found " offending or with an unlawful purpose does not say that the arrest must be at the time of the finding. Yet Parliament must have had some purpose in mind when it incorporated a requirement of " finding " as a condition of the offence for which the arrest is made. One possible reason is that if the culprit is not found in the wrongful situation, if it is all over when the officer arrives on the scene, there is no reason why a warrant should not be obtained. Although the reasoning here is not flawless, it may have been the one that guided Parliament, and, if so, it follows that an arrest without warrant for an offence of being found must be substantially at the time of the finding, or (in accordance with a general principle of the common law) on fresh pursuit after the finding.

The time

The time of arrest for an offence of being " found " is only important under the Larceny Act, when the finding must be at night. " Night " here refers to the statutory night time of 9 p.m. to 6 a.m. (section 46 (1)). It is submitted that if an offender is continually watched from a time during the day to a time during the night, he may be said to be " found " in the situation during the night, though the first finding was during the day. At the other end of the time-scale, an offender may be continually watched from a time during the night to a time during the day and apprehended during the day; it is submitted that the arrest is validated by the Larceny Act, though not made at night (*cf. Stevenson* (1905) 69 J.P. 84), provided that it was made in the building in question or on fresh pursuit.

The intent

Under the Larceny Act the intent must be to commit a felony. Under the Vagrancy Act it may be any "unlawful purpose"; but these words are read as meaning only "criminal purpose" and not as including acts of immorality (such as fornication) or civil wrongs (*Hayes* v. *Stevenson* (1860) 3 L.T. 296).

Time limit on prosecution; arrest on different charge

Speaking of the "being found" provision in the Vagrancy Act, Lord Alverstone C.J. said: "My present view is that there must be a charge brought against the accused of an offence under the section in respect of which he is taken before the justice, and the Act does not contemplate such a charge being preferred after a considerable interval of time, and particularly after he has been arrested upon another charge, and was not originally arrested on suspicion of an offence under the section" (*Moran* v. *Jones* (1911) 104 L.T. 921 at 922).

This opinion seems to confuse the law of arrest with the substantive criminal law. Although the Vagrancy Act gives a power of summary arrest, there is nothing in the Act to prevent the arrest being made upon warrant, and no indication that such an arrest is governed by anything other than the usual statutory limitation of time. Even if an arrest is illegal, the general principle is that this does not invalidate subsequent proceedings. As to Lord Alverstone's concluding words, these are contrary to the general principle that an arrest may legally be continued for some reason for which it was not originally made.

Arrest under two or more Acts

There is much overlapping between statutory powers of arrest. Since an arrester need never specify the legal power under which he is making an arrest, except in legal proceedings in which the validity of the arrest is questioned, he can decide at his leisure which Act gives him the best protection, and he can in an appropriate case rely on two or more Acts. The only restriction follows from the rule that he must at the time of arrest specify the acts for which he is arresting ([1954] Crim.L.R. 15). Obviously he cannot justify an arrest under a statute which does not comprise the acts so specified. Such a statute may, however, justify the *continuance* of an arrest, if the change of charge is communicated to the accused.

(*To be concluded*)

Seven Polish Seamen

By J. H. Craine,
Chief Clerk, Bow Street Magistrates' Court

On September 22, 1954, seven Polish seamen, when their fishing vessel was about 70 miles from the English coast, decided to seize the ship and sail it to England. They seized an opportunity of locking up the skipper in the lavatory, confined six other members of the crew who would not join them, in various places, and stood watch over another, one of the engine men, to see that he kept the engines going until the ship reached port. They took the ship to Whitby, and there gave themselves up to the police and said they wanted political asylum.

The seven seamen were detained pending investigation, and the ship was taken back to Poland by her depleted crew. The Polish Government demanded the extradition of the seven men on three charges; revolt against the authority of the master of a ship on the high seas, malicious wounding and false imprisonment.

Those three offences are all extradition crimes, and are in the First Schedule to the Extradition Act, 1870, and Article 3 of the Extradition Treaty with Poland of January 11, 1932, which was made operative in accordance with sections 2 and 5 of the Act by the Poland (Extradition) Order in Council, 1934 (S.R. & O. 1934, No. 209), of February 26, 1934, which was published in the *London Gazette* on March 2, 1934.

The requisition of the Polish Government was made through the appropriate diplomatic channels, in accordance with section 7 of the Extradition Act, 1870, and in due course warrants were issued by the Chief Magistrate at Bow Street, Sir Laurence Dunne, under section 8 (1). Accompanying the requisition were the warrants issued in Poland, and the depositions, taken there, of the skipper and the other members of the crew who had not joined in the seizure of the vessel. The warrants and the depositions were all duly authenticated in accordance with section 15 of the Extradition Act, 1870.

Representation of the requisitioning Power

The seven men were brought up on the Chief Magistrate's warrants, and the case was heard at Bow Street on November 3, 10 and 23. The defendants were represented by Sir Hartley Shawcross, Q.C., and Mr. Glanville Brown. No one appeared for the prosecution. On being informed that no one appeared to present the case, the Chief Magistrate said: " Most unfortunately the requisitioning Power of Poland is not represented, which puts me in the extremely unwelcome and invidious position of having to conduct some sort of case myself. I do hope that in future Her Majesty's Foreign Office will use their best endeavours to see that requisitioning Powers, particularly in cases of any magnitude, are represented, because it really is an intolerable position for me to have to deal with it."

It is unsatisfactory that there is no regular statutory or other provision for the conduct of an extradition case by or on behalf of the requisitioning Power. It has been the practice at Bow Street to allow foreign governments to appear by counsel to support their requests for extradition, and, in fact, to encourage them to do so, but, of course, they could not be compelled to appear if they took the view they had no right of audience. In this case, the Polish Government appear to have taken the view that having presented their requisition and the evidence in support of it in compliance with the provisions of the Treaty, they had done all they had power to do here, and that the rest of the proceedings in this country must be left to the British authorities.

In the Treaties with Spain and Switzerland, respectively, it is provided, " In cases where it may be necessary, the Spanish (Swiss) Government shall be represented at the English courts by the Law Officers of the Crown." No provision is made under other Treaties or under the Extradition Acts for affording any legal assistance to the magistrates at Bow Street who deal with extradition cases, but sometimes by special arrangement the case is taken over by the Director of Public Prosecutions.

Sir Francis Piggott, one time Chief Justice of Hongkong, one of the greatest authorities on extradition, was of the opinion that the foreign government had no right of appearance. In his book on extradition, published in 1910, he said, " To allow the foreign government to appear seems not only contrary to the whole spirit of the procedure, but also inconsistent with the theory of the subject: which is that an application is made to the British authorities in a matter which does not on the face of it concern them. If the foreign government had a *locus standi* the effect of the administrative order of the Secretary of State would be a permission to that government to conduct the whole of the extradition proceedings. So unusual a course must require express legislative sanction; for the right of access to the British courts depends on constitutional principles of law and is independent of the Sovereign and the Executive." In saying that, he was dealing with *habeas corpus* proceedings in extradition cases, and he gave judgment to that effect in a case which came before him in Hongkong. In that case he said, "In two Treaties only is the subject dealt with, those with Spain and Switzerland; and I agree that the articles do lend some colour to the argument that the foreign government has a *locus standi*, because they provide that, 'in cases where it may be necessary' the Spanish or Swiss Governments are to be represented by the English Law Officers and vice versa. I am not very clear what the words 'in cases where it may be necessary' really mean, but judging by *Re Castioni* [1891] 1 Q.B. 149, where the Attorney-General appeared for the Crown and the Solicitor-General 'by arrangement' for the Swiss Government, it seems to me possible that where a case is of grave importance to the foreign government, as that was, an agreement as to the necessity for its appearance may be come to to assist in the deliberations. But it is quite clear that appearance independent of the English Government is never contemplated."

Subsequently the Chief Justice stated that he meant his remarks to apply to all proceedings after the requisition, including the hearing before the magistrate.

However in this Polish case it appears to have been accepted, without argument, that the requisitioning Power has a right of audience. When asked by Lord Goddard C.J. in the *habeas corpus* proceedings if he represented the magistrate, the Attorney-General replied, "Technically I am appearing for the governor of Brixton Prison. I am not here to urge any argument of any kind on behalf of the Polish Government."

Lord Goddard C.J.: "I suppose you do not deny that if the Polish Government desired to be represented they could have been."

The Attorney-General: "That is so. They had ample opportunity to be here. I am here to give the court all the assistance I can on this very difficult matter."

In his judgment (see p. 85 below), Lord Goddard C.J. refers to the fact that the Polish Government were not represented either before the chief magistrate or the High Court, and infers that they might have been if they had so chosen.

Political or extraditable offences

The evidence contained in the authenticated depositions from Poland was not seriously contested, but all seven of the seamen were called before the magistrate to give their version of the affair.

The facts elicited were that in September of last year these seven men were members of the crew of a small trawler fishing in the North Sea as part of a Polish fishing fleet. On this trawler the captain was in charge of the navigation only. A political commissar and a party secretary, who was nominally an engineman, were really in control of the crew. They exercised supervision over the crew's political leanings, and noted their conversations, doubtless for future action, though at the most material times the commissar had gone aboard another of the trawlers in the fleet, namely the mother ship.

One of these seven men, by name Kolczynski, a fisherman, had a brother serving in one of the other trawlers in the fleet. News that that brother had escaped to England came over the trawler's wireless, and from that moment this man Kolczynski on board this trawler was kept under special observation.

Another fisherman, Radylezenski, was told by the political secretary to get rid of a picture of the Virgin Mary which he had over his bunk. His refusal led to a dispute.

When these seven men were in conversation with each other it was observed that the political secretary was listening in and afterwards that he was making a note. All this caused these seven men to arrive at the conclusion that if they remained on the trawler until they reached Poland again they would be dealt with according to the constitution of the Polish People's Republic and the severity of Polish law would be applied to them. They therefore decided to take charge of the trawler and steer her to an English port.

To accomplish this, and in furtherance of this project, they barred the door of the water closet where the captain had gone for refuge (it was said without much resistance) and they directed an assistant engineman to work the engines; they also put the other members of the crew under restraint.

The political secretary showed fight when awakened in his cabin but was overpowered, being slightly cut on the hand by a fisherman's knife in the hands of Kolczynski.

When this trawler reached Whitby, the seven men marched off and asked for political asylum. They were imprisoned.

The Polish Government applied for the extradition of each of the seven men on offences alleged against each: use of force, depriving his superiors and other members of the crew of their freedom, wounding one member of the crew (in fact the political secretary), damaging the trawler's wireless installation, preventing the captain of the trawler from directing her, thus exposing the Polish vessel to the danger of calamity at sea and the entire crew to loss of life.

But, although the facts were more or less admitted, Sir Hartley Shawcross maintained that the offences were of a political nature. The seven seamen and two other Polish subjects, and three British subjects (one an ex-Ambassador to Poland and two who had been on the Embassy staff in Warsaw) all gave evidence of present-day political conditions in Poland, and said that to leave Poland for the West was considered to be treason.

Sir Hartley then argued that the evidence showed that the majority of the population of Poland were against the present régime, that open revolt was impossible, although resistance was going on underground all the time, and that all that these men had done was to escape by the only means open to them. He maintained that what they had done came within the spirit of what was decided in *Re Castioni* and that any offence they had committed was in the course of acting in a political matter. He said that *Castioni* and other nineteenth-century cases dealt with a world very different from the world of today. The idea of a totalitarian State was not within the conception of the judges of that time. The nineteenth-century cases suggest that offences can only be political if they are part of a rising—an overt movement by one party against another. Those nineteenth-century decisions should not be applied literally today. Today many countries have departed from the principles of democracy. In Poland all political movement is suppressed and driven underground. Although the opposition is underground, it is no less an opposition. Some day Poland may find it possible to assert liberty and form a democratic government. Their chances of doing so are made less if foreign governments do not recognise that persons who escape are motivated by political reasons. It was clear that the only reason these men mutinied was to come to England. There was a political officer on the ship who was above the master in everything but the navigation of the ship. The significance of that is that the ship was a part of the State. A revolt in the ship is, therefore, the revolt of some small community of the State. The ship was part of the territory of the country and run as a community of the country.

The magistrate's duties

Section 3 of the Extradition Act, 1870, provides in subsection (1) that, " a fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the police magistrate or the court before whom he is brought on *habeas corpus*, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character." Section 9 provides that, " The police magistrate shall receive any evidence which may be tendered to show that the crime of which the prisoner is accused or alleged to have been convicted is an offence of a political character or is not an extradition crime."

The Chief Magistrate's view of his duties under those provisions of the Act he stated to be as follows:

" Reducing the matter to the fewest possible words, the surrender of a fugitive prisoner to a State making a requisition for him is always an Act of State, and done in implementation of a Treaty. That surrender can only be made by the Secretary of State.

" After the Secretary of State issues his Order the magistrate's function is briefly:

" 1. To see whether the offence alleged is an extradition offence, that is one made the subject of reciprocal action in the Treaty.

" 2. To satisfy himself of the identity of the prisoner.

" 3. To see that all documents are properly authenticated as required by the Act.

" 4. To see whether by the law of England the evidence is sufficient to establish a prima facie case such as would justify a committal to a higher court.

" 5. To receive any evidence tendered to show that the offence is of a political character, or that the offence is being used as an excuse to get hold of the fugitive to punish him for a previous offence of a political character.

" 6. To see whether or not the offence is of a political character, within the definition of that term pronounced by the High Court.

" 7. If the requirements of the Act are satisfied and no reasons appear to the contrary to make an order committing the fugitive to prison to abide the order of the Secretary of State.

" The Act lays down that no prisoner is to be surrendered if the offence is of a political character.

"All proceedings before and findings of the magistrate are subject to review by the High Court under *habeas corpus,* and very briefly the inherent jurisdiction of the judges as custodians of the liberty of all individuals in this country enables them to say whether or not a man is rightly held in custody. If not rightly held, he is discharged and, of course, no surrender follows. If rightly held the fugitive is committed to abide the order of the Secretary of State, who may in any event refuse the surrender for reasons of State not the subject of consideration by the courts.

"The extradition crimes alleged against these men are said to have been committed on the high seas, but within the jurisdiction of the Polish courts, in that they took place on a Polish ship, a trawler, of the Polish State Fishing Fleet.

"The crimes are:

"1. False imprisonment.

"2. Unlawful wounding.

"3. Revolt against the master of the ship on the high seas.

"All these offences are listed in the schedule to the Treaty between this country and Poland, of January 11, 1932. The Extradition Act of 1870 was applied to this Treaty by Order in Council of February 26, 1934."

The Chief Magistrate considered that the seamen should not be committed on the first charge and that only one, Kolczynski, should be committed on the charge of unlawful wounding. As regards the charge of revolt, the Chief Magistrate considered himself bound by the decision in *Re Castioni* and committed the seamen on that charge whilst he strongly urged that the matter should be taken to the High Court.

He added:—"If I feel bound, as I do, to commit these men to abide further order, it is not because I disagree with anything their learned counsel has said. I am not ashamed to say I agree with every word. It is because I feel the matter must go to the High Court."

Habeas corpus proceedings were taken in the High Court and the seamen were released.

Habeas Corpus Proceedings

Cassels J., delivering the first judgment, after stating the facts, continued: The following points seem to emerge from the evidence taken at Bow Street: Between 1945 and 1947 Poland became a police State ruled by terrorism. The Communist Party became the only party in the State with complete control, with the help of the security police. Anyone opposed to the Communist régime is arrested and some disappear. Relatives too are arrested. It is an offence to leave the country. Ninety per cent. of the population is opposed to the Communist régime. Political agents spy on other people and make reports. The activities of the secret police penetrate into all walks of life. England is not regarded as a friendly country; on the contrary, it is looked upon as an enemy country. To go to a Western country without permission is treason. If a Pole were outside Poland and heard that his brother had fled to the West he would be very unwise to return to Poland. If he returned to Poland he would be punished.

Cassels J. then considered the words of section 3 (1) of the Extradition Act, 1870 (p. 79 above), and continued: According to paragraph 2 of Article 79, Chapter 7, entitled "Citizens' Rights and Duties," of the Constitution of the Polish People's Republic, voted by the legislature on July 22, 1952, "Treason of the country consists of spying, weakening of the armed forces, going over to the enemy, being the gravest crime, will be punished with all the severity of the law."

Treason is an offence of a political character, and is not included in the offences mentioned either in the First Schedule to the Act of 1870 or in the Treaty, but in both these assaults and revolt or conspiracy to revolt on board a ship are included.

During their imprisonment letters from relatives have been handed to all seven men. Some of the men say they are not genuine letters, that the language used is not the language of the writers, and one of them says that a letter from his brother must have been dictated by a member of the security force. The letters speak of betrayal of their country and of going over to the enemy.

There is an indication in the letters that some of the relatives of these men had been removed from their homes in the early days of October, for some of the letters are dated prior to the taking of the evidence of the captain and other witnesses in Poland on October 8 after the trawler had arrived back.

It is submitted on behalf of the men that if they should be extradited they may well only be tried for the offences for which their extradition is requested, but they will be punished as for an offence of a political character, and that offence is treason in going over to the capitalistic enemies.

Everything in the case points that way and for that reason I agree that the writ of *habeas corpus* should issue.

As to the meaning of the phrase "an offence of a political character," definitions were considered in the case of *Castioni*. John Stuart Mill's definition, "Any offence committed in the course of or furthering of civil war, insurrection or political commotion," was rejected as too narrow, and Stephen J.'s definition in his *History* *of the Criminal Law,* in Vol. II, p. 71, " Fugitive criminals are not to be surrendered for extradition crimes if those crimes were incidental to and formed a part of political disturbances," was preferred.

Hawkins J., who cited this passage with approval, also expressed the view that it was not for the magistrate to decide whether the requisition for the surrender of the fugitive criminal has in fact been made with a view to try or punish him for an offence of a political character, but that under section 9 of the Act of 1870 all he had to do was hear the case in the same manner and have the same jurisdiction and powers as near as may be as if the prisoner were brought before him charged with an indictable offence committed in England, and merely to receive evidence which might be tendered to show that the crime of which the prisoner is accused is an offence of a political character and not an extradition crime.

To interpret that Act in such a way seems to me to ignore the words of section 3 (1): " If he proves to the satisfaction of the police magistrate."

In this case the learned chief magistrate has left the decision to this court, being the court before whom the prisoners are brought on *habeas corpus.*

The words " offence of a political character " must always be considered according to the circumstances existing at the time when they have to be considered. The present time is very different from 1891 when *Castioni's* case was decided. It was not then treason for a citizen to leave his country and start a fresh life in another. Countries were not regarded as enemy countries when no war was in progress. Now a state of totalitarianism prevails in some parts of the world and it is a crime for citizens in such places to take steps to leave. In this case the members of the crew of a small trawler engaged in fishing were under political supervision. These men revolted by the only means open to them. They committed an offence of a political character and if they were surrendered there could be no doubt that, while they would be tried for the particular offence mentioned, they would be punished as for a political crime. Thus they have brought themselves within section 3 (1) and made good their claim to have the restrictions referred to observed.

Lord Goddard C.J.: The questions that arise under section 3 (1) of the Extradition Act, 1870, are: (1) whether the offence for which extradition is sought is an offence of a political character, or (2) have the applicants proved to the satisfaction of this court before whom they are brought on *habeas corpus* that the requisition has in fact been made with a view to trying and punishing them for an offence of a political character.

This section is somewhat obscure, especially when it is remembered that by subsection (2) a criminal is not to be surrendered to a foreign state unless provision is made by the law of that state or by an arrangement, which must mean by treaty, that he shall not be tried by the foreign state for any offence committed prior to his surrender other than that for which the surrender is granted. This arrangement has been made by a treaty signed on January 11, 1932, between His late Majesty King George V and the President of the Republic of Poland, and will be found in the Poland (Extradition) Order in Council No. 209 of 1934. The court must not assume that the foreign state will not observe the terms of the treaty: see *Re Arton* [1896] 1 Q.B. 108. The second limb of the section cannot therefore, in my opinion, mean that the court can say that if extradition is sought for crime A we believe that if surrendered he will be tried or punished for crime B. None of the offences in the Schedule to the Act is prima facie political. The precise meaning of this difficult section has not yet been made the subject of judicial decision and textbook writers have found it difficult of explanation, but in my opinion the meaning is this: if in proving the facts necessary to obtain extradition the evidence adduced in support shows that the offence has a political character the application must be refused, but though the evidence in support appears to disclose merely one of the scheduled offences, the prisoner may show that in fact the offence is of a political character. Let me try to illustrate this by taking a charge of murder. The evidence adduced by the requisitioning state shows that the killing was committed in the course of a rebellion. This at once shows the offence to be political; but if the evidence merely shows that the prisoner killed another person by shooting him on a certain day, evidence may be given, and under section 9 the magistrate is bound to receive it, to show that the shooting took place in the course of a rebellion. Then if either the magistrate or the High Court on *habeas corpus* or the Secretary of State is satisfied by that evidence that the offence is of a political character, surrender is to be refused. In other words the political character of the offence may emerge either from the evidence in support of the requisition or from the evidence adduced in answer.

The present case in my opinion comes within the second limb. Prima facie the evidence in support of the requisition merely shows a revolt by two or more of the persons charged on board a ship on the high seas against the authority of the master, and this is a scheduled offence. The evidence, the truth of which the magistrate accepted, showed that these men while at sea found that a political officer was overhearing and recording their conversations and keeping observation upon them for the purpose of preparing a case against them on account of their political opinions, presumably in order that they might be punished for holding or at least expressing them. A resultant prosecution would thus have been a political prosecution. The revolt of the crew was to prevent themselves being prosecuted for a political offence and in my opinion therefore the offence had a political character. I would emphasise that although the requisitioning power is diplomatically represented in this country no attempt was made to controvert or displace the evidence of the applicants or of the witnesses called on their behalf. The Polish Government were not represented before the magistrate or this court and cannot therefore complain if the court accepts the evidence given on this matter by or on behalf of the applicants.

The learned Chief Magistrate while accepting the evidence thought that as the only decision as to what constituted a political offence was that to be found in *Re Castioni* [1891] 1 Q.B. 149, he was bound to commit and to leave it to this court to say whether that decision was conclusive or whether the words "of a political character" could be extended to the facts he found. I desire to say that in my opinion in the circumstances of this case the course he took was entirely proper. It is clear from his careful judgment that had he thought it open to him he would have held the offence to be political. Now the court in *Castioni's* case were careful to say that they were not giving an exhaustive definition of the words "of a political character." They applied a formula taken from Stephen's *History of the Criminal Law*, Vol. II, p. 71, as sufficient for the facts of that case, and no doubt when that work was written, about 1882, no better definition could be given. No doubt the conception of what is commonly called nowadays a "police state" was not unknown in the middle years of the nineteenth century. One need only recall the vigour of Mr. Gladstone's language and some of Lord Palmerston's dispatches as to the state of affairs prevailing in Naples, then a part of the Kingdom of the Two Sicilies, under the despotic rule of a monarch usually referred to as King Bomba. But all that had passed by the time Sir James Fitzjames Stephen wrote, though no doubt political police were still very active in Czarist Russia. The evidence as to the law prevalent in the Republic of Poland today shows that it is necessary if only for reasons of humanity to give a wider and more generous meaning to the words we are now construing, which we can do without in any way encouraging the idea that ordinary crimes which have no political significance will be thereby excused.

This is enough to dispose of the case but we have been pressed by the Attorney-General to consider the opinion of Hawkins J. in *Castioni* where at p. 163 he appears to hold that the magistrate cannot decide the question whether or not the offence is political though he concedes that it is open to this court to do so on a motion for a *habeas corpus*. *Castioni's* case was in some respects adversely criticised in the case of *Re Siletti* (1902) 71 L.J.K.B. 935. The court, Bigham and Darling JJ., were both of opinion that the observations in *Castioni's* case that the court could revise the decision of the magistrate on the evidence were *obiter*, and inconsistent with the decisions in *Ex p. Huguet* (1873) 29 L.T. 41; *R.* v. *Maurer* (1883) 10 Q.B.D. 513; and *Re Arton* (*No.* 2) [1896] 1 Q.B. 509. In the latter case Lord Russell C.J. said at 518, " We are not a Court of Appeal on questions of fact from [the magistrate]. We have only to see that he had such evidence before him as gave him authority and jurisdiction to commit." In *Siletti's* case Bigham J. said at 937, " the only question this court can entertain is the question of jurisdiction. Applying the observation to this particular Act, the accused may say that the crime with which he was charged was not a crime within the meaning of the Act—that is to say, that it did not come within the class of offences contemplated, or that it was an offence of a political character, and therefore was outside the Act altogether." This appears to me to lay down the true rule; the effect of section 3 (1) is to prevent a crime of a political character coming within the purview of the Act. If then the crime is of that character the magistrate has no jurisdiction to commit. If the magistrate wrongly gives himself jurisdiction by holding that a crime is not of a political character when it is this court can and must interfere, and both *Castioni* and *Siletti* affirm this. Moreover, apart from authority this is what in my opinion the statute provides. Clearly the second limb of subsection (1) of section 3 contemplates a decision of the magistrate on the subject; this first limb as I have said above deals with an offence which the evidence called to support extradition shows is political. The second limb contemplates a charge which on its face appears to be one of those set out in the schedule but which on examination of the evidence tendered is shown to be really of a political character. The magistrate must give a decision on this matter and his decision is open to review on *habeas corpus*. In support of this view I would refer to the statutory form of the warrant of committal. It recites " and forasmuch as no sufficient cause has been shown to me why he should not be surrendered." If the magistrate can decide that there is no sufficient cause for refusing to surrender the prisoner, it must follow that he can also find that there is. Section 9 requires the magistrate to hear the case in the same manner and with the same jurisdiction and powers as if the prisoner was before him charged with an indictable offence and to receive any evidence which may be tendered to show that the crime with which the prisoner is charged is of a political character and not an extradition crime. Hawkins J., in *Castioni's* case, seems to have thought that this required the magistrate merely to take the evidence of witnesses for the defence so that it could be considered either by this court or by the Secretary of State, and referred to Russell Gurney's Act (30 & 31 Vict. c. 35). With all respect to the opinion of one who was a great authority on criminal law, the provision in that Act to which he was referring was I think intended to fill a gap in the Indictable Offences Act, 1848. The latter Act did not appear expressly to contemplate taking the depositions of and binding over witnesses for the defence, and this was remedied by section 3 of Russell Gurney's Act. But however that may have been, the position is now clarified by section 12 (8) of the Criminal Justice Act, 1925, which provides that before determining whether or not to commit for trial any statement by the accused and any evidence given by him or his witnesses must be taken into consideration.

Accordingly I am of opinion that it is the duty of the magistrate to determine upon the whole of the evidence whether or not the offence is of a political characer and also whether it is an extraditable crime. He cannot determine this finally against the prisoner because the latter can question the decision on *habeas corpus*. This does not mean that this court will review the magistrate's findings of fact, but they will and must consider the result of those findings.

Devlin J. agreed.

Advocacy at Petty Sessions

By B. Fraser Harrison, *Solicitor*

Where to Plead

(*Continued from p.* 18)

The Magistrates' Courts Act, 1952

The Magistrates' Courts Act, 1952, lays down the circumstances in which apparently serious offences may be prosecuted before the magistrates and gives them the right to try offences otherwise outside their jurisdiction.

The procedure differs according to the age of the accused and sections 18, 19, 20 and 21 are the relevant sections.

Persons who have attained the age of fourteen

By section 18 of the Magistrates' Courts Act, 1952, if the accused is fourteen years of age or more and is charged with *an offence that by virtue of any enactment is both an indictable offence and a summary one* the magistrates shall proceed as though it were not a summary offence, unless the magistrates, having jurisdiction to try the information summarily, shall determine on the application of the prosecutor to do so.

Under this section the magistrates may use their discretion whether or not to accede to the prosecutor's application. There is no direction as to what they must take into consideration when deciding and, in the first place, only the prosecutor may make the application.

The application is made before any evidence is called and, if the accused has failed to appear to answer the information, it may be made in his absence.

If no application is made by the prosecutor at the outset the magistrates begin by enquiring into the information as examining magistrates. Once they have begun the committal proceedings, at any time during those proceedings either the accused or the prosecutor may make representations for the committal to be discontinued and for the information to be tried summarily.

Once the magistrates have begun the proceedings as examining magistrates the application *must* be made in the presence of the accused.

If the prosecution is being carried on by the Director of Public Prosecutions his permission has to be obtained before the information may be tried summarily.

When the magistrates decide to cease the committal proceedings and to try the case summarily the charge is written down and read to the accused before he is asked to plead.

The magistrates have a reverse privilege, under section 18, of discontinuing the summary trial of an offence that is both an indictable offence and a summary one which they have decided to try summarily upon the application of the prosecutor made before the evidence is called, but they must exercise this reverse privilege before the conclusion of the prosecutor's evidence. They may not discontinue a summary trial if, having commenced the committal as examining magistrates and heard some of the evidence, they have agreed to try the information summarily. By section 24 of the Magistrates' Courts Act, 1952, this is the only circumstance in which a summary trial may be discontinued and committal proceedings substituted.

Section 18 does not affect any other enactment enabling the accused or the prosecutor to claim that a summary offence shall be tried by a jury.

Persons who have attained the age of seventeen

Section 19 of the Magistrates' Courts Act, 1952, comes into effect when a person who has attained the age of seventeen appears or is brought before a magistrates' court on *an information charging him with an indictable offence specified in the First Schedule to the Act.*

If no application for summary trial is made to them the magistrates begin hearing the information as examining magistrates and, unless they agree to an application made during the proceedings, continue to do so.

The application may be made at any time in the proceeding by the accused or the prosecutor, but *must* be made in the former's presence.

Under this section the magistrates have specific matters to consider before deciding:—

(a) The nature of the case.
(b) Whether the punishment they have power to inflict if the case is tried summarily is adequate.
(c) Whether the circumstances of the case make the case one of a serious character.
(d) Whether for other reasons it should not be tried on indictment.

It is usual for the application for the information to be dealt with summarily to be made by the prosecutor before the trial commences, and various courts have differing procedures. The three that are most frequently adopted are:—

(a) Where the court requires the prosecutor merely to ask, "Summary trial, please."

(b) Where the court requires a statement outlining the facts from the prosecutor before it decides whether to accede to his request for a summary trial.

(c) Where the court requires a large part of the prosecutor's evidence to be called on oath. Normally the defence takes no part while evidence is being given for this purpose because it has to be given again if the magistrates agree to try the information summarily.

Presumably the same methods would be adopted when it is the accused who asks for a summary trial at the outset, but unless the prosecutor agrees the accused's application is unlikely to be acceded to, although in theory there is no reason, with certain exceptions, why the magistrates should not override the prosecutor's objections.

Again, under section 19, the Director of Public Prosecutions' permission has to be obtained before an offence, although one included in the First Schedule to the Act is tried summarily if the Director is carrying on the prosecution. Also, in those cases affecting the property or affairs of Her Majesty or of a public body as defined by section 7 of the Public Bodies Corrupt Practices Act, 1889, the prosecutor must consent before the magistrates may try one of the offences in the schedule summarily.

Once the magistrates have decided to try an information summarily the charge is written down and read over to the accused. He is then told that he may, if he wishes, be tried summarily by the magistrates rather than by a jury. If the offence is one that is triable by quarter sessions the accused has also to be told of the magistrates' powers under section 29 of the Magistrates' Courts Act, 1952 (see p. 92 below).

Only when all this has been explained to the accused may he be asked whether he agrees to a summary trial. It is he who has the final decision whether the offence will be tried by the magistrates.

One of the advantages of summary trial under section 19 is that the maximum penalty an accused may receive for an indictable offence is imprisonment for six months, or a fine of £100, or both. In practice, if the case is so serious that there is a likelihood of the accused receiving the maximum sentence the prosecutor will have painted a picture so black that the magistrates will not agree to a summary trial in the first place.

Persons who have attained fourteen but not seventeen years of age

Where such a person appears or is brought before a magistrates' court on *an information charging him with an offence, other than homicide, that is not a summary offence,* section 20 of the Magistrates' Courts Act, 1952, applies.

Again, the magistrates begin the trial as though they were examining magistrates, but an application may be made by the accused or the prosecutor for them to deal with the information summarily. The application has to be made in the presence of the accused.

Should the magistrates decide to try the accused summarily he is asked if he consents to being so tried only if :—

(a) The charge has been read over to him *and if*

(b) He has attained the age of sixteen *and* the offence is one that is punishable on summary conviction with imprisonment *and* he has been told of the provisions of section 28 of the Magistrates' Courts Act, 1952 (see p. 93 below).

No matter what the prosecutor may say or the magistrates decide the accused may always insist on a trial by jury.

Normally section 107 of the Magistrates' Courts Act, 1952, precludes a magistrates' court from awarding an accused of under seventeen years a sentence of imprisonment, but if the accused is tried summarily by reason of section 20 and found guilty the magistrates may exercise the same powers as they could have exercised had the accused been found guilty of an offence for which, but for section 107 (2), they could have sentenced him to imprisonment for a term not exceeding three months or impose a fine not exceeding £10.

Persons who have not attained fourteen years of age

When such a person appears or is brought before a magistrates' court on *an information charging him with an indictable offence other than homicide he shall be tried summarily* (section 21 of the Magistrates' Courts Act, 1952).

The effect of this section is to ensure that a person of less than fourteen who is arraigned on any charge, other than homicide, is tried summarily, with one proviso: if such a person is charged jointly with someone who has attained fourteen the court *may* (not must) commit them both for trial if it considers it in the interests of justice to do so.

Cases when an accused who would otherwise be dealt with summarily may insist on trial by a jury

The first subsection of section 25 of the Magistrates' Courts Act, 1952, reads:—

"Where a person who has attained the age of fourteen is charged before a magistrates' court with a summary offence for which he is liable, or would if he were an adult be liable, to be sentenced by the court to imprisonment for a term exceeding three months, he may . . . claim to be tried by a jury, unless the offence is an assault or an offence under section 1 of the Vagrancy Act, 1898."

The right to elect is wholly barred in charges of assault and under section 1 of the Vagrancy Act, 1898; *i.e.*, the charge of being a male person living on the earnings of a prostitute or soliciting for immoral purposes.

If the accused intends to elect for trial by a jury he must be present at the time of election and he may only elect before the summary trial has commenced.

Where an accused has the right of election it is normal for the court by its clerk to inform him of his right; once an accused has elected to be tried by a jury or the prosecutor, if entitled to do so, has insisted that the accused be tried by a jury, the magistrates treat the offence as though it were an indictable one.

If the accused is arraigned on an offence for which he has the right of trial by a jury and also one that must be tried summarily it is usual to adjourn the summary offence until the jury has dealt with the one in respect of which the accused has elected to be tried by a jury. This is what normally happens, but it is a matter for the magistrates' decision and they may wish to hear the summary offence at once.

When deciding in which court to be tried the final consideration is section 29 of the Magistrates' Courts Act, 1952, which reads:—

"Where on the summary trial under subsection (3) of section 18 or section 19 of this Act of an indictable offence triable by quarter sessions a person who is not less than seventeen years old is convicted of the offence, then, if on obtaining information about his character and antecedents the court is of opinion that they are such that greater punishment should be inflicted for the offence than the court has power to inflict, the court may, instead of dealing with him in any other manner, commit him in custody to quarter sessions for sentence in accordance with the provisions of section 29 of the Criminal Justice Act, 1948."

By this section the magistrates are given the power to send an accused whom they have tried summarily to quarter sessions for sentence if the offence is an indictable one and triable by quarter sessions and :—

(a) Under section 18 (3) of the Magistrates' Courts Act, 1952, they have acceded to an application to try the information summarily made either by the accused or the prosecutor *after* they have commenced to sit as examining magistrates ; or

(b) Under section 19 of the Magistrates' Courts Act, 1952, they have acceded to an application to try the information summarily made either before or during the committal proceeding.

Once the magistrates have decided to send an accused to quarter sessions for sentence under section 29 *of the Magistrates' Courts Act*, 1952, *they must commit the accused to await his sentence in custody.*

The advocate will already have written for the accused's record (see p. 14). If his record is such that the magistrates are likely to commit the accused under section 29 *and* he has a reasonable chance of being acquitted then the accused should be advised to elect for trial by a jury. If he does not do this he has the worst of both courts ; trial by the magistrates, not a jury ; and sentence by the recorder or chairman of quarter sessions, and not the magistrates. In any event the accused spends the period of waiting in prison with no chance of bail.

Section 28 of the Magistrates' Courts Act, 1952, gives the magistrates a similar right to commit an accused of not less than sixteen years but under twenty-one, who is convicted of an offence punishable on summary conviction with imprisonment, to quarter sessions for sentence if, having regard to the accused's character and previous conduct and the circumstances of the offence, it is expedient for his reformation and the prevention of crime he should undergo a period of training at a Borstal Institution.

Again he must be committed in custody.

(*To be continued*)

A Scottish Survey

By J. Aikman Smith, B.A.(Oxon), LL.B.(Edin.)
Advocate, Sheriff-Substitute of Roxburgh, Berwick and Selkirk

Lay Justices in Scotland

The Royal Commission on Scottish Affairs which reported last July recommends that responsibility for the appointment of lay Justices of the Peace in Scotland should be transferred to the Secretary of State for Scotland. At present they are appointed by the Lord Chancellor who is advised by a Scottish advisory committee. It is the only Scottish function undertaken by the Lord Chancellor.

The administrative powers and duties of a Justice of the Peace in Scotland and a Justice of the Peace in England largely correspond, but otherwise the resemblance between the two is little more than nominal. In Scotland the layman is assigned a very limited share in the administration of justice, and, for better or for worse, criminal jurisdiction is very largely in the hands of salaried professionals.

Most of the work which in England would be carried out by justices and stipendiary magistrates is done in Scotland in the Sheriff Courts. There are twelve Sheriffdoms, each having a Sheriff, often called the Sheriff-Principal, and a varying number of Sheriffs-Substitute. Except in the Lothians and in Lanarkshire the Sheriffs are Queen's Counsel carrying on private practice in Edinburgh and they are therefore remunerated on a part-time basis. The Sheriffs-Substitute are full-time judges resident within the area of their jurisdiction; they must be advocates or solicitors of at least five years' standing. Both Sheriffs and Sheriffs-Substitute are appointed by the Crown.

The Sheriff Courts have an extensive civil as well as criminal jurisdiction. The main judicial function of the Sheriff is to hear appeals in civil cases from the decisions of the Sheriff-Substitute. In criminal matters there is no appeal from the Sheriff-Substitute to the Sheriff. In practice the Sheriff-Substitute deals with nearly all the criminal proceedings coming before the court.

The Sheriff Court is a court of summary jurisdiction. As such it can impose sentences of up to six months' imprisonment in certain circumstances. The Sheriff or Sheriff-Substitute may also, sitting with a jury of fifteen, take trials on indictment. In all cases brought on indictment the maximum sentence in the Sheriff Court is two years' imprisonment. A person convicted on indictment may be remitted to the High Court for sentence if this maximum is not considered adequate.

The criminal jurisdiction of the Scottish Justice of the Peace Courts is at common law mainly confined to the preservation of the public peace, minor assaults, petty thefts and the like. They also have jurisdiction under various penal statutes in regard to such matters as revenue, highways, fishings and public houses. At common law they cannot impose a fine exceeding £10 or award imprisonment for a longer period than sixty days. The Summary Jurisdiction (Scotland) Act, 1908, expressly precludes the Justice of the Peace Courts from trying or pronouncing sentence in the more serious criminal cases. For example, they cannot deal with assault involving fracture of a limb or stabbing, nor with any case of theft, fraud, or embezzlement to an amount exceeding £10. They cannot dispose of any charge of theft, fraud or embezzlement at all if the accused has two or more previous convictions of any offence concerned with dishonest appropriation of property. The justices can only take cognisance of such matters to the extent of remitting those against whom they are charged to the Sheriff Court.

The Sheriff Court has a concurrent jurisdiction with the Justice of the Peace Courts within the Sheriffdom in regard to all offences with which the latter are competent to deal. In practice in some counties the justices never sit at all in petty sessions, and the offences falling within their jurisdiction are disposed of by the Sheriff-Substitute. In Scotland appeals against the decisions of the justices are as a rule taken to the High Court. Appeals to quarter sessions are relatively infrequent. Such appeals take the form of a new trial. But there the resemblance between English and Scottish quarter sessions ends. The sentences which can be imposed in quarter sessions in Scotland are merely those competent in petty sessions. Quarter sessions have no powers to try persons charged on indictment.

There is no procedure in Scotland corresponding to the preliminary inqury before committal for trial on indictment. It is a cherished principle in Scotland that all pre-trial proceedings must be private and that a jury must approach its duties without foreknowledge of the evidence likely to be led. Persons to be charged on indictment are brought before the Sheriff-Substitute and are given the opportunity to make any declarations they think fit.

Before committing them for trial the Sheriff-Substitute is to be satisfied that a prima facie case exists against them. The public and the press are excluded from these proceedings.

Justices in Scotland exercise authority in the county or county of a city for which they are appointed. Royal Burghs have their own Burgh Courts, and other burghs have police courts, in which lay magistrates or bailies, elected from the town council, preside. Broadly speaking, the powers of these magistrates within the area of their authority are the same as those of the justices.

The Children and Young Persons (Scotland) Act, 1937, provides for the formation of panels of justices specially qualified for dealing with juvenile cases, and enacts that no justice shall sit as a member of a juvenile court unless he is a member of such a panel. This provision, however, only applies to areas which the Secretary of State by order directs, and so far these juvenile courts of justices of the peace have only been set up in the counties of Ayr, Fife and Renfrew, and in the city of Aberdeen.[1] Elsewhere the powers and duties of such courts are exercised by any local court of summary jurisdiction. This means that in most parts of the country young offenders are brought before the burgh magistrates or county justices in minor cases, and in more serious cases before the Sheriff-Substitute.

The present century has seen the enlargement of the responsibilities of the unpaid judge in England. There has been no similar development in Scotland. Scotsmen recognise the virtues of the English system as it has evolved in its own environment and admire the public spirit of those on whom so much responsibility is placed. There would, however, be little disposition in any quarter to enlarge the general judicial powers of lay judges in Scotland beyond their present limits. This attitude arises not from any lack of public confidence in Scottish justices and burgh magistrates but rather from the convenience of the Sheriff Courts, sitting as they do in daily session and exercising so wide a criminal jurisdiction. In the important sphere of the staffing of the juvenile courts, however, more use than at present might well be made of specially qualified justices. Too little attention has probably been paid in Scotland as a whole to the qualities required in those who exercise authority over young offenders.

Scottish Prison Conditions

Overcrowding is not a problem in Scottish prisons. While they are sufficiently well-filled there is accommodation enough to provide every prisoner with a private cell. There is no necessity, as there is in some English local prisons, to confine three prisoners in a cell.

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[1] *Cf.* the English Juvenile Courts (Constitution) Rules, p. 124, below.

There are, broadly speaking, two reasons for Scotland's relatively comfortable situation in this respect. In the first place, in proportion to population Scotland has in the past been better provided with prison accommodation than England. In the second place, it would appear that while in England the average daily prison population has more than doubled since 1938 the average daily number of persons in custody in Scotland, in that period, has risen only by about 40 per cent.

The Report on Prisons in Scotland for 1953 (Cmd. 9144) shows that the average daily number of persons in custody last year was 2,152. This figure includes Borstal trainees and criminal lunatics, the latter not yet having been transferred to the care of the Board of Control, as in England. The numbers for 1953 are the highest since 1914. In 1900 the daily average was 2,698, in 1913 it was 2,613, and in 1938 it was 1,543.

These figures suggest that the post-war increase in crime has been more violent in England than in Scotland. Scottish satisfaction on this score must, however, be tempered by the reflection that not every Scot who travels south is a pillar of respectability. The accents of Clyde-side are often heard at Bow Street and the Old Bailey. More Scotsmen are probably convicted in England than Englishmen in Scotland. There must be many prisoners of Scottish origin in English custody.

The population of the Scottish prisons does, however, include a number of offenders serving sentences imposed in England. Where good and sufficient reasons exist, arrangements can be made for sentences to be served in the prisoner's native land. Scottish National Servicemen convicted in England may generally be transferred to Scottish prisons if they wish. Scottish lads sentenced in the south to Borstal training will as a rule be sent to Scottish institutions to be near their parents. On compassionate grounds, such as the illness of close relatives, Scottish prisoners are not infrequently transferred to prisons nearer home.

Scottish prisons and Borstal institutions have in the post-war years been largely successful in providing a full working day for those in custody. The aim of the Scottish Home Department is that every prisoner and inmate should work an eight hour day. This has been achieved in all Borstal institutions and in the case of most prisoners. To do this a three-shift system of staffing has been introduced. This system entails an appreciable increase in the number of prison officers—an increase which is relatively higher at small establishments—and its introduction at a few of the smaller prisons accommodating mainly short-term prisoners has been postponed meantime. In England the main obstacles to employment for a full working day appear to be shortage of prison officers and workshop accommodation.

In England there are already over 1,500 prisoners in " open " prisons. In Scotland there have till very recently been none. A start, however, has now been made. In the face of a good deal of local opposition a house with grounds of 55 acres has been acquired at Penninghame in Galloway, and it was expected that a small advance party of selected prisoners would be in residence by the end of 1954. This new establishment will ultimately accommodate about fifty male long-term first offenders who, after preparation by graduated stages at other prisons, have shown themselves suitable for training under " open " conditions.

While Scotland has lagged in the development of " open " prisons she would appear to be ahead in the development of " open " Borstals. Cornton Vale, an institution for about forty lads near Stirling, is a notable example of progress in this direction. Lads selected for training there are at first mainly employed in the institution market garden. Parole visits to the town are permitted in the evenings. During the last six months of training every trainee goes out to work, in a large variety of occupations. The institution becomes in effect his residential hostel. Employers pay the ordinary wages for the work which is being done. The trainee keeps 12s. weekly as pocket-money, and 10s. is credited to a savings account which he uplifts on release. The balance pays for his board and lodging. During 1953 over fifty lads went out to work from Cornton Vale, and it appears that their employers were well satisfied both with their work and with their conduct. At Polmont, Scotland's largest Borstal, which is classified as a " medium-security " and not an " open " establishment, there are similar arrangements for selected lads to go to work for outside employers.

Pleas in Murder Trials

It has long been the practice of the Crown in Scotland to refuse to accept a plea of guilty to a charge of murder. This practice occasioned a good deal of public discussion last summer, following the trial in the High Court in Edinburgh of Alexander Robertson. Robertson was charged with the murder of his former wife and son. The circumstances which emerged in a trial lasting two days were more than usually sordid and distressing. The defence sought without success to establish that the accused was of diminished responsibility, and he was found guilty of murder and sentenced to death.

Before sentence was pronounced Robertson made a statement expressing the opinion that, in cases like his own, persons accused of murder should be entitled to be dealt with on a plea of guilty.

There is obviously much to be said for Robertson's point of view. If it were accepted, witnesses, and children in particular, might be spared seemingly unnecessary distress. On the other hand, the danger of false confessions, whether inspired by insanity or altruism, is quite considerable. On the whole, public opinion in Scotland seems to favour the view that where the death penalty may be imposed the Crown should continue to undertake the duty of fully establishing its case, whatever the wishes of the accused.

Trials of a Colonial Beak

By OLIVER SHAW, *Barrister-at-Law*

Magistrates have been described as judicial beasts of burden. If the inventor of this famous phrase had served in the Gold Coast he might well have called them slaves in the judicial galley.

For all the tribulations of the English stipendiary magistrate or the country J.P. are accentuated, with several additional categories added. The jurisdiction is wider, one has to work in tropical heat, with frequently no fan or other cooling apparatus, most of the proceedings are carried on in one or more of several different native languages through an interpreter (sometimes two); the volume of work is, I should say, very much greater, and there is no shorthand writer. Although he does not necessarily have to write every single word of the evidence, a magistrate is expected to, and does, keep an almost verbatim record of what each witness says.

Most of the accused persons are illiterate (albeit loquacious), and one has to travel considerable distances by car, generally in the heat of the afternoon, whilst on circuit or, as the local jargon has it, "on trek." During the rainy season, and indeed at all times, due to the generally low standard of driving among the African lorry drivers, "trekking" is a perilous undertaking quite apart from such hazards as punctures and broken springs. As a result of the appalling state of the roads, especially off the main routes, the latter are of frequent occurrence.

Pot holes are not pot holes, they are craters. I have broken a spring doing 15 m.p.h. actually within the confines of a village. Once I had a puncture, which was followed almost immediately by another in the spare wheel, only to find that the rubber solution in my repairing outfit was defective, due to the heat. As a result, the " mend " only lasted about two or three miles. We trundled along, changing the wheels every quarter of an hour or so, for about 20 miles, my cook, house-boy and court clerk taking it in turns to re-patch the inner tube, preserving the utmost good nature, which is more than could be said for myself.

We finally arrived at the Rest House in the dark, after taking several hours to cover a distance which normally takes 25 minutes. But of " trekking," more later. I merely mention this at the outset to disabuse the minds of any who may still have that old-fashioned idea that a Colonial Civil Servant starts work at ten o'clock in the morning, has coffee at eleven, then goes to lunch at twelve-thirty, and spends the afternoon having a siesta in his spacious bungalow. Nothing could be further from the truth, at any rate as far as district magistrates are concerned; nor as far as my experience goes does it apply to any of the Colonial Service, whatever their job. The normal sitting times of the magistrates' courts are almost invariably in excess of the standard five hours applicable in England, and when time spent in chambers doing necessary paper work, which is considerable, and actual travelling time on trek is added, the hours on duty are often double those prevailing here, and that in a tropical climate. The court sits every day, including Saturday mornings; Sundays and public holidays alone are excepted. In fact, whilst I was at one station (in the British Mandated Territory of Togoland and administered as part of the Gold Coast) I sat on most Bank holidays.

During the same tour, and due to most exceptional circumstances I did once sit on a Sunday. This turned out to have unfortunate results. The case was a very long and bitterly contested one in which the accused, a Customs officer, was charged with extortion (or some similar offence) in connection with his official duties. He was represented by counsel, and the case had gone on, with numerous adjournments, over a period of some weeks. Because of my trekking schedule I was only able to sit at that particular place on Friday and Saturday mornings. The case was almost completed and I was going on leave the following week. I was sitting on the Saturday morning on what I hoped and indeed intended would be the last session, but the case dragged on all the Saturday afternoon until about 7 p.m., after I had called for lamps (there was no electricity there) and continued after dusk. It was still not finished, but before counsel for the defence left the court, I announced my intention—indeed, it was an absolute necessity, if I were to finish the case and thus avoid a re-trial by another magistrate—of sitting the following (Sunday) morning. Counsel made no objection and, indeed, he turned up in court the following day, but two hours late, and just as I had given judgment. The appropriate ordinance provides that magistrates' courts shall sit " at such times and places as may be decided by the magistrate," or words to that effect.

When I returned from leave, however, I learned that the case had gone on appeal to the Divisional Court (one High Court judge in this case), and the conviction had been quashed on the ground that a judgment given on the Lord's Day was a nullity.

Jurisdiction

I said earlier that the jurisdiction of the district magistrates' courts was greater than that of the corresponding courts in England. The maximum punishment which can be awarded is twelve months' imprisonment, which, however, may be increased up to a maximum of two years in the case of persons having a previous conviction or convictions of an offence of a similar kind. There is no option on the part of the accused to be tried by the High Court, corresponding to the right in this country for a defendant accused of certain offences to go to quarter sessions or assizes. The district magistrate in all cases (except those of juvenile offenders) sits alone and is the judge of law and of fact. In more serious cases such as murder, manslaughter (by a recent ordinance), arson, falsification of accounts, rape and a few others, the case *must* go to the High Court. In these cases, of course, the district magistrate merely takes the depositions in the preliminary inquiry, and either finds or does not find a prima facie case to go to the assizes. Even when the district magistrate has jurisdiction he may, having regard to the gravity of the offence and his maximum powers of punishment, remit the case to the High Court instead of dealing with it himself.

It is curious that though a district magistrate may, if he wishes, try a larceny case himself, however large the amount involved, he cannot do so if the offence is falsification of accounts, as this is one of the crimes which it is mandatory to send up to the High Court, even if the amount is only a few pounds. Although this would not concern the courts of summary jurisdiction in any event, it is to be noted that trial by jury does not exist at all in the Gold Coast.

As far as the magistrates' courts are concerned the system is that the colony is divided up into areas of jurisdiction, some of which are still served by lay magistrates in the persons of the district commissioners, now called Government agents. These are primarily administrative officers and their powers of punishment are somewhat lower than those of the professional magistrates, who exclusively enjoy the title of "District Magistrates." The system, of course, has grown up historically from the time when the entire colony was served (as far as summary courts are concerned) by the district commissioners, who exercised both executive and judicial functions.

Even now, the Government agents, in their capacity as magistrates, constitute a reviewing authority over certain decisions of the native courts. Moreover, they still act as magistrates, within the limits of their own jurisdiction, in areas normally covered by the district magistrates.

They frequently help out, for example, in the more trivial motoring cases, assaults, and other minor offences, where technical points are not likely to arise. They also have powers of signing summonses, subpoenas, and warrants of arrest, etc. Normally, however, in the areas covered by them, the district magistrates do the great bulk of the work. These areas are, of course, based on the larger towns, the most important of which are Accra and Kumasi, the old capital of Ashanti. The district magistrates live in these towns and sit there and also in the courts on their circuit. The size of this circuit may vary from time to time, according to whether the number of district magistrates stationed at each town is considered adequate. Accra normally requires three district magistrates and Kumasi the same, though as a result of sickness, leave, or a district magistrate performing the duties of an acting judge these towns may from time to time be left with only two. The other stations are served by one district magistrate. Where there is a single magistrate, he will sit in such of his courts, including those on the circuit, as the judicial work demands. In the centres where there is more than one magistrate the normal practice is for the court of that town to be manned each day by one, whilst the other (not always the same individual, of course) is on trek.

We were usually in chambers shortly before 8 a.m. and after signing summonses, subpoenas and warrants for arrest, etc., we would sit at 8.15 or 8.30 a.m.

It was possible to visit some of the towns outside one's home station and get back the same night. Other treks required two or, in some cases, three nights away from home. In these instances, after sitting at one place until say two or three o'clock in the afternoon, one would go on to the next place and spend the night at the Government Rest House, ready to sit the next morning, after which one would go on to the next place and so on, finally arriving back at one's home station. It is a very strenuous and exacting life at all times, but particularly in the rainy season, when thunderstorms occur almost daily, and generally at about 4 p.m., just when one is on the way to the next court town.

The normal practice was to take one's cook, court clerk and interpreter, plus your own and their personal gear, and the court record books, which are fairly heavy tomes. The result looked like the family picnic, or a car full of refugees fleeing from the Nazi terror. One's car was constantly overloaded, causing eventually flattened out rear springs, which, in turn, resulted in broken shock-absorbers.

In the larger stations, where there are two magistrates, the number of criminal cases disposed of in a month was frequently from five to six hundred and sometimes seven or eight hundred.

We had, in addition, a civil jurisdiction, roughly equivalent to the county court jurisdiction in England. On top of all this district magistrates were coroners, and part of our duty was to examine all the inquest dockets submitted by the police, decide in our discretion whether or not an inquest should be held, and hold such inquests as were decided upon.

The common offences

A numerous category of criminal cases were those relating to the Motor Traffic Ordinances, under which a very large variety of offences were prosecuted. Examples are:—

Carrying in passenger lorries (which are the main mode of transport for the indigenous population) persons in excess of the prescribed number, overloading (by weight) freight lorries, tyres worn down to the canvas, inadequate maintenance of vehicles, travelling without lights or driving mirror, number plate obscured, obstruction and parking in prohibited places, careless and dangerous driving and last, but by no means least, failing to give way to an overtaking vehicle.

The African driver has a rooted objection to allowing another vehicle to pass. This applies particularly to the drivers of lorries, the passenger variety of which are known locally as "Mammy Lorries." It is a common occurrence to follow one of these contraptions for two or three miles lying on its tail and hooting continuously without the lorry giving way one inch. In fact, whilst just about to be overtaken, or even in the act of being overtaken, some drivers will start to pull out instead of pulling in and many accidents are caused in this way. I have had this happen to me more than once, and it is most unnerving, as the narrow African roads are frequently bounded by a ravine or a deep gutter. Whilst following, clouds of dust are thrown up in one's face so that by the time one does eventually overtake (if one does) tempers are slightly frayed at the edges. When such drivers are pulled up and their offence pointed out to them, they invariably say that they did not hear. In such a case I always pointed out that the driver, being deaf, was obviously not qualified to hold a licence. It very often happened, that in fact the driver had no licence, which was a further offence.

The motoring cases were usually dealt with before the more serious business came on, and it was quite common to have thirty or forty of these cases before one started the real day's work. In Accra and Kumasi, indeed, a special day was set aside for traffic offences. This was often not enough and part-heard cases had to be held over.

Setting fire to houses was a fairly common offence, which could be dealt with by the magistrate himself if the lower charge of "Causing malicious damage to property" was brought. If, however, the accused was charged with arson it would have to be dealt with as a preliminary inquiry for remittance to the High Court, if a prima facie case were found.

A fruitful source of revenue in the shape of fines was the offence of illicitly distilling gin (known locally as "trade spirit" and made from palm wine), and for peddling the same. The chief offenders in this class of case were women, generally the most frightful old crones imaginable. Another offence which frequently cropped up was that known as "money doubling," and dealt with, of course, under the heading of "false pretences." This is a primitive form of confidence trick, where A persuades B to part with a sum of money with the promise, in fact the most solemn guarantee, that with the aid of the spirits of the other world with whom he is in close partnership, the money will be doubled or trebled within the space of a few days. Of course, A's conference with the gods lasts an indefinite time and he is never seen again, until arrested.

Another offence (triable only by the High Court) is that of "child stealing." I had a case within my own experience, where the accused was a Fetish priest, who had taken a small child to a Fetish House (a sort of temple), the very strong inference being that it was going to be murdered for sacrificial purposes. Luckily the child was found before this was carried out.

Sexual offences against very young girls are very common, and come under the offence known as "defilement of a female under the age of 13 years." I have had numerous cases of little girls, aged 6, 8 or 10 years, having been interfered with and one case of a small child of three. In contrast to the number of sexual offences against females my experience leads me to believe that homosexuality is practically non-existent. I have never had a case myself involving anything of that kind, and I did not indeed hear of one during the time I was in the Gold Coast.

The average African lays great store by medicines and pills. A heavy traffic goes on constantly between unqualified quacks and the public in remedies of all sorts and for all purposes, from causing abortions, and curing venereal disease, to lumbago or leprosy. Many of the people who peddle these medicines are ex-Army medical orderlies, hospital male nurses, and the like. They frequently give injections of penicillin without, of course, having the slightest idea of the quantities required or, indeed, if the remedy is efficacious at all. Thefts of "M. and B." and other drugs provide a constant supply for this illegal market, and there is a continual smuggling racket going on from French territory.

The selling of poisons by persons not having a licence to do so is also a frequent offence. This illegal sale of drugs can be very harmful. I had a case where a man having leprosy, refused treatment (which he could apparently legally do) but had managed to secure a large quantity of the latest (and I believe only effective) drugs for this disease; stolen property, of course. The doctor gave evidence that the quantity found in the possession of this man was sufficient to set up a resistance in hundreds of thousands of people if they took only a small quantity each. If any of these people subsequently contracted leprosy and were given the standard cure this immunisation would render it ineffective.

(*To be continued*)

Practice and Procedure

Quarter Sessions

Powers of sentence in summary offences

In a recent prosecution under section 4 of the Gaming Houses Act, 1854, for keeping a common gaming house the defendant, who claimed to be tried by a jury, was eventually fined £250 at quarter sessions and ordered to be imprisoned for twelve months in default of payment. This fine was half the prescribed maximum; the period of imprisonment, however, equalled the maximum which by the statute may be awarded in the first instance without the option of a fine. The magistrates' court, if it had dealt with the case and imposed the maximum fine, would have been restricted by the scale set out in the Third Schedule of the Magistrates' Courts Act, 1952, to a term of three months' imprisonment in default of payment.

The quarter sessions court presumably used the power conferred by section 14 (1) of the Criminal Justice Act, 1948. This enacts that " where a fine is imposed by . . . a court of assize or quarter sessions, an order may be made . . . (*c*) fixing a term of imprisonment which the person liable to make the payment is to undergo if any sum which he is liable to pay is not duly paid . . . Provided that any term of imprisonment fixed under this subsection in default of payment of a fine shall not exceed twelve months."

This section appears to be wide enough in its terms to cover a fine imposed for a summary offence tried at quarter sessions after the accused has claimed to be tried by a jury. There is no statutory provision that quarter sessions in such cases must not impose a greater penalty than could have been imposed in the magistrates' court. Indeed, there seems to be no section of the law at all which deals with the sentence in this type of proceeding. In view of this it will follow that, in the case of those offences which are both indictable and summary (*e.g.* dangerous driving and driving under the influence of drink), a defendant who claims to be tried by a jury when proceeded against summarily thereby makes himself liable to the penalties prescribed for the indictable, and not the summary form of the offence.

A clear suggestion that this result is intended by the law is contained in section 25 (5) of the Magistrates' Courts Act, 1952. There would be no point otherwise in its requirement that, in specified circumstances, the defendant shall be told, before being given his right to claim jury trial that, if tried summarily, he may be committed to quarter sessions for sentence should the magistrates' court decide that its powers of punishment are not adequate.

In *R.* v. *Phillips* [1953] 2 Q.B. 14, Lord Goddard C.J. spoke of the right to claim trial by jury as becoming " something in the nature of a trap " if more serious offences were allowed to be added to the indictment after committal. If not a trap, it is at any rate a matter for serious consideration by an accused person making his choice of tribunal that if he elects to go for trial he may, in respect of an offence put to him as a summary one, be sentenced as for an indictable offence.

The position is quite otherwise in the case of an appeal from a magistrates' court; there the law restricts the powers of quarter sessions in precise terms. Subsection (5) of section 14 of the Criminal Justice Act, 1948, adds the proviso: "This section shall not apply to a fine imposed by a court of quarter sessions on appeal against a decision of a court of summary jurisdiction." And section 31 (1) (viii) of the Summary Jurisdiction Act, 1879, enacted that "on an appeal against a conviction or a sentence, the powers of quarter sessions . . . shall be construed as including power to award any punishment, whether more or less severe than that awarded by the court of summary jurisdiction, *which that court might have awarded*." [A. E. Jones.]

Magistrates' Courts

Notice to an aider and abettor of intended prosecution under the Road Traffic Act, 1930

Section 21 of the Road Traffic Act, 1930, provides that "Where a person is prosecuted for an offence under any of the provisions [of Part 1] relating respectively to the maximum speed at which motor-vehicles may be driven, to reckless or dangerous driving, and to careless driving he shall not be convicted unless" he has been given notice of intended prosecution in accordance with the section. The question which recently arose at this court was whether the section applied to a person who was charged as an aider and abettor of an offence specified in the section and, if it did, whether notice to the principal was notice to the aider and abettor.

The answer to these questions is not to be found in the Road Traffic Act, 1930, but it was considered that section 35 of the Magistrates' Courts Act, 1952, applied to the first point. By this section "a person who aids, abets, counsels or procures the commission by another person of a summary offence shall be guilty of the like offence and may be tried (whether or not he is charged as a principal) either by a court having jurisdiction to try that other person or by a court having by virtue of his own offence jurisdiction to try him." It seems clear from this section that if the aider and abettor is to be guilty of the same offence as the principal and if the principal cannot be convicted unless he has received a proper notice, then the aider and abettor cannot be convicted unless he too has received a notice under the terms of section 21 of the Road Traffic Act, 1930.

As regards the second point, it was argued that notice to the principal was sufficient notice to the aider and abettor. It was proved that the principal was the registered owner of the vehicle and that the notice served upon him stated that consideration was being given to the question of prosecuting " you " for an offence. The principal was in fact prosecuted and convicted. The particularisation of the principal in the notice excluded the aider and abettor from being covered by it—*expressio unius, exclusio alterius*. Had the notice been in more general terms, the position would have been different, for a notice to the registered owner is sufficient if it states the nature, time and place of the offence, without particulars of the person to be prosecuted (*R.* v. *Bolkis* (1932) 24 Cr.App.R. 19) and a notice may be served on a company though its servant who was responsible is not served (*Rogerson* v. *Edwards* (1951) 49 L.G.R. 358). There is no provision putting the principal in the position of an agent of the aider and abettor for the purpose of receiving notice under section 21. [D. W. Whitaker, Clerk to the Justices, Watford.]

Case and Comment

The reports of cases to which initials are appended hereunder have been specially prepared for *The Criminal Law Review* by the following reporters:—

HENRY PALMER, *Barrister-at-Law.*
J. D. PENNINGTON, *Barrister-at-Law.*

Bribery—*Payment for stolen property—bribe equivalent to purchase price*

R. *v.* BATEMAN and LINNECOR [1] (Warwick Assizes: Donovan J.: December 4, 1954).

B. and L. were jointly indicted. B., who was a major in the Regular Army, pleaded guilty to two counts of larceny of War Department property and not guilty to a further count under section 1 of the Prevention of Corruption Act, 1906, charging him with corruptly accepting £130 given to him by L. as agent for a company which had a contract with Her Majesty as an inducement to show favour to that company. L. was charged *inter alia* with an offence under the same section, namely with giving B. the sum of £130 as an inducement for showing favour to the company. B.'s defence was that the sum charged as a corrupt gift was in fact part payment for the stolen property which he had sold to L. Donovan J. directed the jury that on a fair construction of the section under which B. was charged it would be a defence for him to show that in fact the money had been received by him from L. as part of the purchase price of the property which he had already pleaded guilty to stealing, the ground being that the purchase price of property could not be regarded as a bribe where such price represented approximately the value of the property.

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[1] For the Crown: *Sir Frank Soskice Q.C., N. F. M. Robinson* (instructed by the Director of Public Prosecutions). For the defendant Bateman: *Geoffrey Smallwood* (instructed by David Lees & Bates, Bristol). For the defendant Linnecor: *A. P. Marshall Q.C., Colin Coley* (instructed by Westwood, Morris & Co., Birmingham).

B. and L. were each found guilty of the offence under section 1.

[Reported by Miss Jean Fisher, *Barrister-at-Law*.]

COMMENTARY. See Archbold, 33rd ed., 1467.

Evidence—*Admissibility—confession*

R. *v.* JONES [2] (Bedfordshire Quarter Sessions: C. P. Harvey, Esq., Q.C., Deputy Chairman: December 13, 1954).

The accused was charged with gross indecency. After the accomplice, who had pleaded guilty, had given evidence the prosecution called one of the police officers who had interviewed the accused. In the absence of the jury it was submitted by the defence that the whole of the police evidence was inadmissible as the officer's deposition disclosed that his colleague had said to the accused: " Why tell us a pack of lies ? You had far better tell us the truth about the matter." On behalf of the prosecution it was submitted that even if the evidence of the original interview was inadmissible, the answer of the accused after caution when charged a week later was admissible.

Held, (1) that the evidence of the interview was clearly inadmissible as the accused's answers had not been voluntary. (2) As to the answer of the accused when charged by the first officer, the learned Deputy Chairman felt less certain: the prosecution had to prove that the inducement had ceased to operate on the accused's mind. In the only two cases cited in Archbold (at p. 409) the time-lag between the two inadmissible confessions was a few hours: in the present case seven days. As the burden of proving the voluntary nature of a confession was on the prosecution, and as in cases of doubt a confession should be excluded (*R.* v. *Thompson* [1893] 2 Q.B. 12), the accused's answer to the charge was inadmissible as the prosecution had not been able to show that the inducement had ceased to operate.

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[2] For the prosecution: *Howard Sabin* (instructed by Alexander Farr & Son, Bedford). For the defence: *Eric Stockdale* (instructed by Dixon, Martell & Batcheldor, Bedford).

The prosecution case was then closed and the jury stopped the case.

[Reported by Eric Stockdale, *Barrister-at-Law.*]

COMMENTARY. See Archbold, 33rd ed., 408–9.

Evidence — *Identity — photograph — whether mis-reception of evidence*

R. *v.* CHALONER[3] (Court of Criminal Appeal: Lord Goddard C.J., Cassels and Devlin JJ.: December 13, 1954).

C. appealed against his conviction for dangerous driving on the ground that evidence of his identification had been improperly admitted at the trial. A police officer had jumped on the running-board of C.'s car but had been pushed off. The officer subsequently picked out a photograph of C. from a volume of 200 at Scotland Yard. C. was then arrested and the officer picked him out at an identification parade.

Held, dismissing the appeal, that there was no mis-reception of evidence. [H. P.]

COMMENTARY. This method of identifying a defendant has been used in a number of cases. The evidence should not be given in such a way as to lead the jury to suppose that the accused has been previously convicted, see Archbold, 33rd ed., 365.

Extradition—*Fugitive offender—habeas corpus—discretion of court*

R. *v.* GOVERNOR OF BRIXTON PRISON, *ex p.* GREEN[4] (Q.B. Divisional Court: Lord Goddard C.J., Cassels and Devlin JJ.: December 15, 1954) (*The Times*, December 16, 1954).

G., having been discharged from his employment in Uganda, was given his passage back to this country, but before leaving he stole a cheque which he forged, arriving back in this country with the proceeds. An extradition order was made against him under the Fugitive Offenders Act, 1881, and he was committed to Brixton Prison. On an application for a writ of *habeas corpus*, the Divisional Court was asked to exercise its discretion under section 10 of the Act, on the ground that the gravity of the offence did not outweigh the cost of sending G. to Uganda to stand his trial, and it was suggested that he might be put on bail while he repaid the money.

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[3] For the appellant: *E. Rich* (instructed by Wegg-Prosser & Co.). For the Crown: *Sebag Shaw* (instructed by the Solicitor, Metropolitan Police).

[4] For the applicant: *G. Granville Sharp Q.C.*, *John Haines* (instructed by D. A. Roberts Thomas). For the governor: *Maxwell Turner* (instructed by the Director of Public Prosecutions). For the Secretary of State for the Colonies: *John Mathew* (instructed by Charles Russell & Co.).

Held, that it was not a case in which the court should exercise its discretion. This was not the kind of case in which it appeared that the defendant would be given only a nominal sentence or be bound over. [J. D. P.]

COMMENTARY. Section 10 of the Fugitive Offenders Act provides: "Where it is made to appear to a superior court that by reason of the trivial nature of the case, or by reason of the application for the return of a fugitive not being made in good faith in the interests of justice or otherwise, it would, having regard to the distance to the facilities for communication, and to all the circumstances of the case, be unjust or oppressive or too severe a punishment to return the fugitive . . . such court may discharge the fugitive. . . ." This gives the court a very wide discretion which should be very carefully and very seldom exercised and only in exceptional circumstances: *R.* v. *Brixton Prison Governor, ex p. McCheyne* [1951] 1 T.L.R. 1155.

Extradition—*Political offence*

R. *v*. GOVERNOR OF BRIXTON PRISON, *ex p*. KOLCZYNSKI[5] (Q.B. Divisional Court: Lord Goddard C.J., Cassels and Devlin JJ.: December 13, 1954) ([1955] 2 W.L.R. 116; [1955] 1 All E.R. 31).

The facts of this case and the decision are contained in the article on p. 75.

Infants—*Imprisonment—no other appropriate means of dealing with person under twenty-one*

R. *v*. GEIS[6] (Surrey Quarter Sessions: Brigadier A. C. C. Willway, C.B., Chairman: December 16, 1954).

The defendant, aged nineteen years, appealed against a sentence of three months' imprisonment for failing to submit himself for medical examination as required by section 8 (7) of the National Service Act, 1948. In 1953 he was provisionally registered as a conscientious objector, but his name was later removed from the register and his appeal to the Conscientious Objectors' Tribunal against the removal dismissed. The defendant failed to obey a number of notices served on him requiring him to attend for medical examination and in October, 1954, was convicted under section 8 (4) of the National Service Act, 1948. He was fined £5 and ordered to be detained so that he might be escorted to the examination centre. He was so escorted but again refused to be examined. He was charged with failing to comply with an order made by a court of summary jurisdiction and, having elected to be tried summarily and pleaded guilty, the defendant was sentenced to three months' imprisonment. The magistrates considered that although the appellant was under twenty-one there was no appropriate means of dealing with him except by sending him to prison and gave the following reasons for so doing: (1) that the sentence gave the appellant a further opportunity to appeal to the Appellate Tribunal of Conscientious Objectors under section 20 (1) of the Act of 1948; (2) a further fine would only lead to further prosecution. Counsel for the appellant contended that the sentence of imprisonment was not appropriate and, with regard to the two reasons, that the appellant had stated that he would make no further appeal and that there was nothing to indicate that, in the future, he would disobey further notices.

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[5] For the applicants: *Sir Hartley Shawcross Q.C., W. Glanville Brown* (instructed by Chancellor, Jaxa & Partners). For the Crown: *Sir Reginald Manningham-Buller Q.C., A.-G., Maxwell Turner* (instructed by the Director of Public Prosecutions).

[6] For the prosecution: *J. S. R. Abdela* (instructed by Durham & Co.). For the defendant: *Murray Band* (instructed by Denis Hayes).

Held, dismissing the appeal, that the magistrates were right in imposing a sentence of imprisonment. The appellant's refusal to submit to a medical examination involved open defiance of the law and left the magistrates with no alternative but to impose a sentence of imprisonment. The sentence now rested upon the reason given at the hearing of the appeal and not upon the reasons given by the magistrates.

[Reported by Miss Marlene Jones, LL.B.]

COMMENTARY. The Criminal Justice Act, 1948, s. 17 (2), provides: "No court shall impose imprisonment on a person under twenty-one years of age unless the court is of the opinion that no other method of dealing with him is appropriate."

The Magistrates' Courts Act, 1952, s. 107 (3), provides: "Where a magistrates' court imposes imprisonment on a person under twenty-one years old under powers contained in subsection (2) of section 17 of the Criminal Justice Act, 1948, . . . the court shall state the reason for its opinion that no other method of dealing with him is appropriate."

See Stone, 8th ed., 1666.

Lottery—*Private lottery—lottery run by club among its members*

MAYNARD v. WILLIAMS [7] (Q.B. Divisional Court: Lord Goddard C.J., Cassels and Devlin JJ.: December 17, 1954) ([1955] 1 All E.R. 81).

A football supporters' club was formed for the purposes of obtaining funds for a particular football club. The membership of the supporters' club was open to all persons without distinction for an annual subscription of one shilling. Its membership exceeded 7,000. In addition to its social activities, the club had conducted lotteries for the express purpose of raising funds. Tickets could only be obtained by members on payment of one shilling and about 5,000 tickets were sold each week. After deducting expenses, 60 per cent. of the receipts were used as prizes and 40 per cent. for the football club. Quarter sessions held ([1954] Crim.L.R. 791) that the lottery was a private lottery within section 24 (1) of the Betting and Lotteries Act, 1934, and, therefore, the organisers were not guilty of using premises for the purposes of an illegal lottery contrary to section 22 (1) (*f*). On appeal by the prosecution:—

Held, allowing the appeal, the fact that the running of the lottery might be ancillary to the other purposes of the club did not make it lawful; since it was part of the business of the club to raise money by lotteries then it was established for the purpose of conducting a lottery and contravened the Act. [J. D. P.]

COMMENTARY. See Archbold, 33rd ed., 1430, 1431; Stone, 86th ed., 1494, 1496.

Lottery—*Private lottery—lottery run by club among its members*

PEARSE v. HART [8] (Q.B. Divisional Court: Lord Goddard C.J., Cassels and Devlin JJ.: December 14, 1954) ([1955] 1 All E.R. 91n).

A football supporters' club, in addition to organising dances and social evenings, ran a lottery. Membership of the club cost a shilling and to buy a lottery ticket cost a further shilling. After deducting expenses, 75 per cent. of the proceeds of the lottery was used for prizes and 25 per cent. for the purposes of the club. On a charge of unlawfully printing tickets in a lottery contrary to section 22 (1) (*a*) of the Betting and Lotteries Act, 1934, justices held that the lottery was not a private one within the meaning of section 24 (1) and that although only members of the club participated, the club was conducted for a purpose connected with lotteries. On appeal:—

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[7] For the prosecutor: *Sir H. Hylton-Foster Q.C., S.-G., Rodger Winn, J. T. Molony* (instructed by the Director of Public Prosecutions). For the club: *Dingle Foot Q.C., Thomas Kellock* (instructed by Arthur & Co.).

[8] For the appellants: *H. Heathcote-Williams Q.C., Christopher Friday* (instructed by Devonshire & Co. for Bretherton & Sons, Gloucester). *Sir H. Hylton Foster Q.C., S.-G., Rodger Winn, Paul Wrightson* (instructed by Director of Public Prosecutions).

Held, dismissing the appeal, that the justices were justified in coming to the decision to which they did. [J. D. P.]

COMMENTARY. See Archbold, 33rd ed., 1430, 1431; Stone, 86th ed., 1494, 1496.

Magistrates—*Metropolitan police magistrate—jurisdiction*

See EDGWARE TRUST *v*. ST. GEORGE, below.

Moneylender—*Certificate—validity—jurisdiction of metropolitan magistrate to issue*

EDGWARE TRUST *v*. ST. GEORGE[9] (Queen's Bench Division: Slade J.: October 7, 1954) ((1954) 118 J.P. 519).

A moneylender, whose premises were situated within the district of the Marylebone Street magistrate's court, had been issued with a certificate authorising the grant of a moneylender's excise licence by the Bow Street magistrate's court. In an action by the moneylender on a promissory note, the defence contended that the loan in respect of which the promissory note was given had been made while the moneylender was unlicensed.

Held, that a metropolitan police magistrate had jurisdiction throughout the metropolitan police district and it was not confined to the district in which he was sitting; the certificate issued at Bow Street, therefore, was valid and the moneylender was entitled to sue on the note. [J. D. P.]

COMMENTARY. The Moneylenders Act, 1927, s. 1 (3), provides: "If any person . . . (*b*) carries on business as a moneylender without having in force a proper moneylender's excise licence authorising him so to do . . . he shall . . . be liable to an excise penalty of £100" for a first offence; heavier penalties are provided for subsequent offences.

See Stone, 86th ed., 1623–4.

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[9] For the moneylender: *Figgis* (instructed by M. A. Jacobs & Sons). For the defendant: *M. Parker* (instructed by Clifford-Turner & Co.).

National Service—*Liability to serve—British subject—temporary residence*

MINISTER OF LABOUR AND NATIONAL SERVICE *v.* ULLAH [10] (Birmingham Magistrates' Court: J. F. Milward, Esq., Stipendiary Magistrate: December 8, 1954).

The defendant was charged under section 8 (4) of the National Service Act, 1948, with failing to obey a notice requiring him to go for a medical examination. He was born at Alompur, Bengal, in what is now Pakistan, and had come to England to assist his uncle, a draper, in his business. His passport when originally issued in 1951 was marked: "national status:—Pakistan British subject"; during the course of the case it was returned to the office of the Pakistan High Commissioner in London and the defendant's status altered to "citizen of Pakistan." It was contended that the defendant was not subject to the National Service Act, 1948, since he was a citizen of Pakistan and was residing in Great Britain only temporarily.

Held, applying *Bicknell* v. *Brosnan* [1953] 2 Q.B. 77, that the defendant was not in England for a temporary purpose only and that as he was admittedly a citizen of Pakistan he was a British subject within the meaning of section 1 (1) of the British Nationality Act, 1948, and so subject to the National Service Acts.

[Reported by Miss Jean Fisher, *Barrister-at-Law*.]

COMMENTARY. In *Bicknell* v. *Brosnan,* above, it was held that an Irishman in Great Britain for an indefinite period was not residing here for a temporary purpose only within the meaning of the National Service Act, 1948.

The British Nationality Act, 1948, s. 1 (1), provides: "Every person who under this Act is a citizen of the United Kingdom and Colonies or who under any enactment for the time being in force in any country mentioned in subsection (3) of this section is a citizen of that country shall by virtue of that citizenship have the status of a British subject. . . . (3) The following are the countries hereinbefore referred to, that is to say, Canada, Australia, New Zealand, the Union of South Africa, India, Pakistan, Southern Rhodesia and Ceylon."

See Stone, 86th ed., 1666.

National Service—*Sentence—infant*

See R. *v.* GEIS, p. 111, above.

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[10] For the Minister of Labour and National Service: M. P. Pugh, Prosecuting Solicitor. For the defendant: *A. M. Abbas, R. A. Mohammadi* (instructed by Adrian de Fleury, Gassman & Co.).

Prisons—*Rules—whether ultra vires—special treatment*

SILVERMAN *v*. PRISON COMMISSIONERS [11] (Queen's Bench Division: Streatfeild J.: December 16, 1954) (*The Times*, December 17, 1954).

S. was sentenced at the Central Criminal Court to ten years' preventive detention and in accordance with rule 161 of the Prison Rules, 1949, the Commissioners caused him to be detained in Wandsworth Prison for one year to serve the first stage of his sentence. The rule provided that prisoners in the first stage of preventive detention should be treated in the same manner as prisoners serving sentences of imprisonment and made no provision for special treatment as required by section 52 of the Criminal Justice Act, 1948. S. brought an action for a declaration that rule 161 was *ultra vires* the powers given to the Secretary of State under section 52.

Held, (1) that no action lay against the Commissioners since they did not make the rules and the action, therefore, was misconceived; (2) in any event the rules did not confer any positive rights on prisoners and the court had no jurisdiction to grant a declaration except in aid of an enforceable legal right; (3) special treatment in section 52 meant the treatment accorded to the prisoner as a whole during his period of detention and not his day-to-day treatment. [J. D. P.]

COMMENTARY. The Criminal Justice Act, 1948, s. 52, which is now replaced by the Prison Act, 1952, s. 47, provided: "(1) The Secretary of State may make rules for the regulation and management of prisons. . . . (4) Rules made under this section shall provide for the special treatment of . . . (*a*) any person serving a sentence of preventive detention."

Public Mischief—*Misdirection—sedition—both offences charged in respect of same speech*

JOSHUA *v*. R. [12] (Judicial Committee of the Privy Council: Lords Oaksey, Keith of Avonholm and Mr. L. M. D. de Silva: December 7, 1954) ([1955] 2 W.L.R. 8; [1955] 1 All E.R. 22).

The appellant was charged with sedition and with effecting a public mischief, contrary to common law, the particulars being that, by means of certain false statements in a public speech, he agitated and excited certain sections of the public against the police, to the prejudice and expense of the community. In his charge to the jury the trial judge directed the jury as a matter of law that if they found that the appellant uttered the words complained of he was guilty of the offence of effecting a public mischief. The appellant was acquitted of sedition, but convicted on the public mischief charge.

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[11] The plaintiff appeared in person. For the commissioners: *Rodger Winn* (instructed by the Treasury Solicitor).

[12] For the appellant: *Ralph Millner* (instructed by Garber, Vowles & Co.). For the Crown: *J. G. Le Quesne* (instructed by Charles Russell & Co.).

Held, allowing the appeal, that it was for the judge to direct the jury as to the elements of the crime of effecting a public mischief and to direct them on the facts, and it was for the jury to find whether the appellant was guilty on those facts. As it was the jury had been misdirected. Further, it was undesirable that the two offences of sedition and effecting a public mischief should be charged in respect of one speech. [J. D. P.]

COMMENTARY. The Judicial Committee acknowledged the conflicting views as to whether, apart from conspiracy, there is any common law offence of effecting a public mischief, but considered that it was not necessary to decide the matter in this case.

Quarter Sessions—*Jurisdiction—conspiracy*

R. *v*. COOPE, REDFERN, MITCHELL AND HARDY [13] (Derby County Quarter Sessions: R. E. A. Elwes, Q.C., Chairman: July 7, 1954).

The defendants were charged with conspiring together and with other persons unknown to defeat the course of public justice by giving false information to the police to conceal the commission of offences by M. against Regulation 16 of the Motor Vehicles (Driving Licences) Regulations, 1950. They went out one evening in two cars, one of which was driven by M. M. was the holder of a provisional licence but the car which he drove had no "L" plates nor was he accompanied by a competent driver. Both cars were involved in an accident with a third car. All the defendants gave statements to the police in which they said that R. was driving M.'s car and that M. was a passenger.

The defendants were committed for trial to the Derby County Quarter Sessions.

Held, that as there is no such offence as "defeating the course of justice" *simpliciter*, quarter sessions had no jurisdiction to try the case under section 1 (16) of the Quarter Sessions Act, 1842, which provides that justices in sessions may not try a case of unlawful conspiracy, unless it is to commit an offence which the justices have jurisdiction to try when committed by one person. The offence was not one of those in which jurisdiction is given to quarter sessions either by the Administration of Justice (Miscellaneous Provisions) Act, 1938, s. 2, Sched. 1 (11) (conspiracies to commit an offence punishable on summary conviction); or by the Criminal Justice Act, 1925, s. 18, Sched. 1 (2) (unlawful conspiracies to cheat and defraud). The case was therefore sent to Derbyshire Assizes, where all four defendants pleaded guilty.

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[13] For the prosecution: *T. R. Heald* (instructed by the Director of Public Prosecutions). For the defendants: *M. V. Argyle* (instructed by K. C. Horton & Page, Ilkeston).

[Reported by Miss Jean Fisher, *Barrister-at-Law.*]

COMMENTARY. See Archbold, 33rd ed., 94, 1477–8.

Road Traffic—*Motor-vehicle—classification—"5 cwt. vehicle"*

PETHERICK *v.* BUCKLAND [14] (Q.B. Divisional Court: Lord Goddard C.J., Cassels and Devlin JJ.: December 14, 1954) ([1955] 1 All E.R. 151).

The defendant having been convicted of permitting a youth aged seventeen to drive an uninsured delivery van "having the size and capacity of 5 cwts.," the justices disqualified him from driving 5-cwt. vehicles for twelve months. On appeal by the prosecutor on the ground that there was no such class or description of vehicle in the Road Traffic Act, 1930:—

Held, dismissing the appeal, that the court could not interfere with the direction of the justices, but that in future justices should limit disqualifications to classes of vehicles dealt with as a particular class or under a particular description in the Act or regulations. [J. D. P.]

Sentence—*Conditional discharge—breach of order—whether sentence should be passed*

R. *v.* FRY [15] (Court of Criminal Appeal: Lord Goddard C.J., Cassels and Devlin JJ.: December 17, 1954) ([1955] 1 W.L.R. 28; [1955] 1 All E.R. 21).

F. applied to the court for leave to appeal from a sentence of Borstal training. In April, 1954, he had been convicted by a magistrates' court of larceny and conditionally discharged. In October he was convicted at quarter sessions of office-breaking, larceny and attempted store-breaking and sentenced to Borstal training for those offences. No sentence was imposed in respect of the original offence for which F. had been conditionally discharged.

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[14] For the prosecutor: *F. H. Lawton* (instructed by Sharpe, Pritchard & Co., for D. E. Morgan, Chelmsford). *Rodger Winn* (*amicus curiae*) (instructed by Treasury Solicitor). The defendant did not appear.

[15] The applicant did not appear and was not represented. The Crown was not represented.

Held, dismissing the application, that the sentence of Borstal training was a perfectly proper one. But it would have been desirable in this case to impose a nominal sentence of imprisonment for the original offence. If no sentence at all is passed in respect of the offence for which a man has been conditionally discharged, the discharge does not rank as a conviction with the result that it cannot be pleaded if it later becomes necessary to prove previous convictions for any purpose (for example, if a court were considering a sentence of corrective training: see *R.* v. *Grimmer* below). [H.P.]

COMMENTARY. The Criminal Justice Act, 1948, provides: s. 7 (1): ". . . a court by or before which a person is convicted of an offence . . . may make an order . . . discharging him subject to the condition that he commits no offence during such period . . . as may be specified therein"; s. 8 (6) "If a person in whose case . . . an order for conditional discharge has been made by a court of summary jurisdiction is convicted before a court of . . . quarter sessions of an offence committed . . . during the period of conditional discharge . . . the court . . . may deal with him, for the offence for which the order was made, in any manner in which the court of summary jurisdiction could deal with him if it had just convicted him of that offence."

See Archbold, 33rd ed., 265.

Sentence—*Corrective training—previous convictions—effect of probation orders*

R. *v.* GRIMMER [16] (Court of Criminal Appeal: Lord Goddard C.J., Hilbery and Ashworth JJ.: November 22, 1954).

G. appealed against his sentence of three years' corrective training on the ground that the conditions laid down in section 21 (1) of the Criminal Justice Act, 1948, had not been satisfied. G. was not less than twenty-one years of age and had been twice previously convicted since attaining the age of seventeen of offences punishable on indictment with imprisonment for a term of two years or more. On conviction for both offences he was placed on probation.

Held, following *R.* v. *Stobbart* (1951) 35 Cr.App.R. 125, that since section 12 of the Criminal Justice Act, 1948, provides that a conviction in respect of which a prisoner is placed on probation is not to count as a conviction for any purpose other than the purposes of the proceedings in which the order is made, the court had no option but to set aside the sentence of three years' corrective training. A sentence of three years' imprisonment would be substituted. [H. P.]

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[16] The appellant appeared in person. The Crown was not represented.

COMMENTARY. See Archbold, 33rd ed., 1523–4.

Sentence—*Imprisonment—infant*

See R. *v*. GEIS, p. 111, above.

Trial—*Verdict—inconsistent verdicts—test to be applied*

R. *v*. STONE [17] (Court of Criminal Appeal: Lord Goddard C.J., Cassels and Devlin JJ.: December 13, 1954).

S. appealed against his conviction on the ground that the verdicts returned by the jury were inconsistent. S. was convicted upon one count only (count 10) in the indictment. That count charged him with attempting to induce persons to enter into an agreement for or with a view to the acquisition of certain 4½ per cent. First Mortgage Debenture Stock, 1970/1981, issued by Wake & Dean, Ltd., by stating that the current assets of Wake & Dean, Ltd., for the year . . . amounted to £641,607. In another count (count 8) S. was charged that he induced W. to enter into an agreement as aforesaid. At the trial W. in giving evidence said that he was induced, and that evidence was not challenged by the defence. It was contended for S. that the real issue before the jury was whether he made the statement recklessly and, since the jury must have been satisfied that he induced W., they ought to have found S. guilty on count 8 as well as on count 10; alternatively, they ought to have found S. not guilty on both counts.

Held, dismissing the appeal, that in considering whether the jury have returned a repugnant or inconsistent verdict, the burden of proof is on the appellant. The right test to apply is not necessarily to look at the whole panorama of the evidence and to assume that the jury at the time they gave their verdict had it all in mind. The appellant must satisfy the court that the two verdicts cannot stand together, meaning thereby that no reasonable jury who are applying their minds properly to the facts of the case could have arrived at the conclusion. The jury may have said: "We are satisfied he attempted to induce some persons and we cannot remember at this stage whether he induced W. or not." Applying the above test, the appellant had not satisfied the court that the verdicts were inconsistent. [H. P.]

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[17] For the appellant: *Neville Faulks* (instructed by Walter, Burgis & Co.). For the Crown: *Norman Skelhorn Q.C., J. T. Molony* (instructed by Director of Public Prosecutions).

COMMENTARY. See Archbold, 33rd ed., 200 *et seq.*, 346.

Vicarious Liability—*Conversion—carriage of goods—liability of master for theft by servant*

UNITED AFRICA CO. *v.* SAKA OWOADE[18] (Judicial Committee of the Privy Council: Lords Oaksey, Keith of Avonholm and Mr. L. M. D. de Silva: December 13, 1954) ([1955] 2 W.L.R. 13).

At the request of the respondent, a transport contractor, the appellant company gave to the respondent's servants goods for carriage by road. The goods were never delivered to their destination and the servants were convicted of stealing them. It was established that the conversion by the servants took place in the course of their employment. In an action by the company against the respondent for the value of the goods,

Held, that the respondent was liable for his servants' fraud even though it was not for the respondent's benefit, and, therefore, he was liable to the company. There is no difference in the liability of a master for wrongs whether for fraud or for any other wrong committed by a servant in the course of his employment and it is a question of fact in each case whether it was committed in the course of the employment. [J. D. P.]

Acts and Orders

Agriculture

AGRICULTURE (DELEGATION OF PEST CONTROL FUNCTIONS TO COUNTY AGRICULTURAL EXECUTIVE COMMITTEES) (AMENDMENT) REGULATIONS, 1954 (S.I. No. 1623): operative December 11, 1954. The Minister of Agriculture and Fisheries has delegated to County Agricultural Executive Committees certain of his functions under sections 1, 4 and 9 of the Pests Act, 1954 (see [1955] Crim.L.R. 45), and under section 98 (7) of the Agriculture Act, 1947 (added by section 2 of the former Act). These functions concern the making and publication of rabbit clearance orders, the extension of the rights of certain occupiers as regards the shooting of rabbits in rabbit clearance areas, the reduction of breeding places and cover for rabbits, and licences permitting the trapping of hares and rabbits in the open.

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[18] For the appellant company: *T. G. Roche* (instructed by Linklaters & Paines). For the respondent: *Phineas Quass Q.C., S. N. Bernstein* (instructed by A. L. Bryden & Williams).

DISEASES OF ANIMALS (LICENSING OF WASTE FOOD STERILISATION PLANT) ORDER, 1954 (S.I. No. 1689): operative December 31, 1954. In areas specified in Schedule 1 of the Order a person collecting or receiving waste foods from premises occupied by another may not use them for feeding to animals or poultry, or part with possession or control of them to anyone for feeding purposes, unless the foods have been sterilised. Such foods must be boiled for at least one hour by means of plant and equipment licensed by an officer of the Ministry of Agriculture and Fisheries. The Order does not apply to local authorities collecting waste foods in exercise of their powers under section 9 of the Agriculture (Miscellaneous Provisions) Act, 1954 (see [1954] Crim L.R. 633), or to persons having not more than four weaned pigs or fifty head of poultry ; nor does it apply to waste foods collected by registered pig and poultry clubs or to foods for which a certificate of exemption is in force under the Diseases of Animals (Boiling of Animal Foodstuffs) Order, 1947 (S.R. & O. No. 1175). That Order does not apply to waste foods sterilised in accordance with the above provisions provided such foods are kept separate from all unsterilised waste foods and from contact with animals or poultry.

The Order is enforceable by the local authority. For offences and penalties, see sections 78 and 79 of the Diseases of Animals Act, 1950.

KITCHEN WASTE (LICENSING OF PRIVATE COLLECTORS) REVOCATION ORDERS (S.I. No. 1690); SCOTLAND (S.I. No. 1716): both operative December 31, 1954. The Orders of 1944 (S.R. & O. Nos. 142, 128), as amended, are revoked.

The NEW FOREST (CONFIRMATION OF BYELAW) (NO. 2) ORDER, 1954 (S.I. No. 1697): operative January 1, 1955, restricts the bovine animals which may be depastured on the open forest.

WARE POTATOES (AMENDMENT NO. 2) ORDER, 1954 (S.I. No. 1594): operative December 6, 1954. The Order of 1954 (S.I. No. 986; see [1954] Crim.L.R. 725) is amended and restrictions on the sale of the longer-keeping varieties of potatoes removed.

AGRICULTURAL AND VEGETABLE SEEDS (REVOCATION) ORDER, 1954 (S.I. No. 1602); AGRICULTURAL SEEDS AND GROWING OF SEED CROPS (REVOCATION) ORDER, 1954 (S.I. No. 1603): both operative December 9, 1954. A number of orders imposing controls on the growth, production, sale and importation of seeds are revoked.

Aliens

ALIENS (APPROVED PORTS) (NO. 2) ORDER, 1954 (S.I. No. 1725): operative January 1, 1955. The airports Lympne, Northolt and Rhoose are removed from the list of ports approved for the purposes of the Aliens Order, 1953 (S.I. No. 1671; see [1954] Crim. L.R. 68), and those of Cardiff (Rhoose) and Southend (Rochford) added to it.

Animals

See DISEASES OF ANIMALS (LICENSING OF WASTE FOOD STERILISATION PLANT) ORDER; NEW FOREST (CONFIRMATION OF BYELAW) (NO. 2) ORDER, p. 122, above.

Births and Deaths

REGISTRATION (BIRTHS, STILL-BIRTHS, DEATHS AND MARRIAGES) CONSOLIDATED REGULATIONS, 1954 (S.I. No. 1596): operative January 1, 1955. A number of regulations concerning the registration of births, deaths and marriages are consolidated, but no alteration is made in the law.

Emergency Laws

IRON AND STEEL SCRAP ORDER, 1954 (S.I. No. 1593): operative December 6, 1954. The Order of 1952 (S.I. No. 1665), as amended, is replaced with some alterations. The price of wrought iron scrap is no longer controlled when sold fully sorted from all other scrap; the price of other scrap is only controlled in the case of transactions with consumers and chemical users of scrap. Some prices are increased and the abatement which must be made when scrap is not delivered at the consuming works is revised. Licences granted under the Order of 1952 in force on December 6, 1954, have effect as if granted under the new Order.

For penalties for contravention see Defence (General) Regulations, 1939, reg. 92.

STRATEGIC GOODS (CONTROL) ORDER, 1954 (S.I. No. 1622): operative January 7, 1955. The exportation of various goods specified in the first schedule to the Order to Albania, Bulgaria, China, Czechoslovakia, Hungary, North Korea, Poland, Roumania, the Soviet Zone of Germany, Tibet and the U.S.S.R. is prohibited.

PAPER (MISCELLANEOUS CONTROLS) (AMENDMENT) ORDER, 1954 (S.I. No. 1694): operative December 31, 1954. The definition of "paper" in certain Orders specified in the schedule is altered.

MISCELLANEOUS CONTROLS (REVOCATION) ORDER, 1954 (S.I. No. 1693): operative December 31, 1954. Orders relating to the control of paper, jute and utility goods are revoked.

Firearms and Offensive Weapons

FIREARMS RULES, 1954 (S.I. No. 1616): operative February 1, 1955. New forms are prescribed for applications for the grant of a firearm certificate and for the renewal or variation of such a certificate. The Rules of 1937 (S.R. & O. No. 250) are amended accordingly.

Juries

JURORS' ALLOWANCES REGULATIONS, 1954 (S.I. No. 1627); SCOTLAND (S.I. No. 1650): both operative January 1, 1955. Maximum subsistence allowances are increased to 3s. 6d. for not more than four hours' absence from home or business and 7s. for more than four hours' absence. Where a juror is away from home overnight a maximum allowance of 27s. 6d. may now be recovered for expenses reasonably incurred for board and lodging. The maximum allowances for compensation for loss of earnings or additional expense are increased to 15s. for not more than four hours' absence and 30s. for more than four hours. In England and Wales where a juror travels by private conveyance and this results in a substantial saving of time or is otherwise reasonable the maximum travelling allowance is increased to 6d. a mile; in other cases it is reduced to 2d. a mile.

Juvenile Courts

JUVENILE COURTS (CONSTITUTION) RULES, 1954 (S.I. No. 1711): operative March 1, 1955. A number of Rules relating to the constitution of juvenile courts are consolidated, with some amendments. The principal alterations are:—(1) at the meeting to elect a chairman of justices in October of every third year, beginning in October, 1955, the justices for each petty sessions area must appoint justices specially qualified for dealing with juvenile cases and under the age of sixty-five to form a juvenile court panel for that area. Additional members may be appointed to the panel at any time if necessary; (2) a juvenile court must include one man and one woman unless no man or no woman is available owing to circumstances unforeseen when the court was appointed and an adjournment is considered inexpedient in the interests of justice; (3) each juvenile court must sit under a chairman or deputy chairman elected by the juvenile court panel, unless owing to circumstances unforeseen when such chairmen were appointed, such chairman is not available or cannot properly sit as a member of the court; in these cases the members of the court must choose one of their number to preside.

Local Authorities

See DISEASES OF ANIMALS (LICENSING OF WASTE FOOD STERILISATION PLANT) ORDER, p. 122, above.

Magistrates

See JUVENILE COURTS (CONSTITUTION) RULES, p. 124, above.

Magistrates' Courts

The following Orders altering petty sessional divisions have been made: S.I. 1954, Nos. 1641 (Hertfordshire); 1724 (Worcestershire).

Marriage

See REGISTRATION (BIRTHS, STILL-BIRTHS, DEATHS AND MARRIAGES) CONSOLIDATED REGULATIONS, p. 123, above.

Medicine

THERAPEUTIC SUBSTANCES REGULATIONS, 1954, AMENDMENT (S.I. No. 1645); CONTROL OF SALE AND SUPPLY (S.I. No. 1646: both operative January 1, 1955. Oxytetracycline and it preparations intended for parenteral injection are added to the substances to which the Therapeutic Substances Act, 1925, applies and provisions concerning them are added to the Regulations of 1952 (S.I. No. 1937). Further minor amendments are made to the Regulations and the provisions concerning insulin are replaced. For offences see section 6 of the Act of 1925.

The Penicillin Act, 1947, now applies to erythromycin, neomycin, oxytetracycline and polymyxins, their salts and substances with identical or similar chemical and biological properties but not produced by living organisms; it also applies to corticotrophin, cortisone and hydrocortisone and esters of the two latter substances. For offences see section 3 of the Act.

Mines and Quarries

MINES AND QUARRIES ACT, 1954 (2 & 3 Eliz. 2, c. 70): operative on a day to be appointed. The law relating to mines and quarries is consolidated and revised. The Act is designed to define basic principles clearly and firmly, leaving their application to be dealt with by regulations.

Parts I, II and IV revise the present provisions relating to management and control. They deal with the responsibilities of owners, and persons appointed by owners (other than managers) to exercise responsibilities on their behalf and the managers of particular mines or quarries.

Parts III and V contain the basic safety and health requirements for mines and quarries, respectively, and make detailed provision concerning shafts, roads, haulage apparatus, support, ventilation, lighting and contraband.

Parts VI and VII deal respectively with notification and investigation of accidents.

Part VIII brings up to date those provisions of the present law which regulate the employment of women and young persons at mines and quarries. There is provision for the raising of the minimum age for the employment of boys below ground to sixteen on a date to be fixed by the Minister of Fuel and Power. The conditions now applying to boys under sixteen in surface employment are extended to all youths under eighteen.

Part IX contains provisions regarding the keeping of certain reports and records, the posting of certain notices, the making of returns to the Minister and the means of acquainting workmen with the statutory requirements which affect their particular jobs.

Part X contains the Minister's power to make general regulations (applying to all mines of specified classes) and special regulations (applying to individual mines or quarries).

Part XI deals with the appointment and duties and powers of H.M. Inspectors of Mines and Quarries.

Part XII deals with the grant, cancellation and suspension of certificates. Where a person holding a certificate under the Act is charged with an offence application may be made on behalf of the Minister for his certificate to be cancelled or suspended if he is convicted. Notice of intention to make an application must be served with the summons or warrant. The defendant may on pleading to the charge elect to have the question of the cancellation or suspension of his certificate decided by a tribunal appointed by the Minister.

Part XIII provides for the fencing of abandoned or disused mines and quarries.

Offences, legal proceedings and penalties

Part XIV relates to offences under the Act, legal proceedings and penalties.

Subject to certain exceptions, the owner, any person to whom he has delegated his responsibilities under section 1, the manager, and any acting manager of a mine or quarry and the under-manager or acting under-manager of a mine are each liable for any contravention of the Act or order made thereunder (section 152).

Where no express penalty is provided the penalty for an offence under the Act is a fine not exceeding £200 in the case of the same persons as are liable under section 152 and of the surveyor of a mine, and £20 in the case of other persons. If the offence is continued after conviction, there is a daily fine not exceeding £5 for each day on which it is so continued. Imprisonment for a term not exceeding three months may be imposed upon a person convicted of an offence which was likely to cause the death of or injury to any person, or a dangerous accident (section 155).

Where a person is charged under section 152 with an offence in respect of a contravention by a person other than himself it is in certain cases a defence to prove that he used all due diligence to secure compliance with the provision contravened (section 156). It is a defence in all cases except where it is expressly provided that a person is to be guilty of an offence to prove that it was impracticable to avoid or prevent the contravention (section 157).

It is an offence to procure or consent to the commission of an offence under the Act (section 153). A parent allowing a young person to be employed at a mine or quarry in contravention of the Act is liable to a fine not exceeding £20 (section 160). There are a number of offences relating to forged documents, false statements, entries and returns for which the maximum penalty on summary conviction is three months' imprisonment or a fine of £100 or both, and on conviction on indictment two years' imprisonment or a fine of £200 or both (section 161). It is an offence to remove or deface certain notices or documents, the maximum penalty being a fine of £5 (section 162).

Unless otherwise stated every offence under the Act may be tried either summarily or upon indictment (section 163 (1)).

Part XV contains miscellaneous provisions concerned mainly with giving effect to the Act.

Pensions

SUPERANNUATION (CIVIL SERVICE AND METROPOLITAN POLICE STAFF) TRANSFER RULES, 1954 (S.I. No. 1723): operative December 31, 1954. Where an officer transfers from an established post in the civil service to pensionable employment as a member of the Metropolitan Police staff, or from that staff to the civil service, and thereafter to other pensionable employment covered by rules made under the Superannuation (Miscellaneous Provisions) Act, 1948, ss. 2 and 15, a single superannuation award may now be made in respect of his service throughout. The rules may be applied retrospectively.

Police

POLICE (NO. 2) REGULATIONS, 1954 (S.I. No. 1686); SCOTLAND (S.I. No. 1715): operative December 28, 1954. Regulation 29 of the English Police Regulations, 1952 (S.I. No. 1704) and regulation 34 of the Scottish (S.I. No. 1355), which relate to supplementary rent allowances, are continued in force until December 31, 1957. A removal allowance is now payable where a member of a police force moves his home at the request of the chief officer in the interests of the force's efficiency. Allowances may be made to cover certain National Health Service charges. The Police (No. 2) Regulations, 1952 (S.I. No. 1994) are revoked.

POLICE (DISCIPLINE) REGULATIONS, 1954 (S.I. No. 1687); DEPUTY CHIEF CONSTABLES, ASSISTANT CHIEF CONSTABLES AND CHIEF CONSTABLES (S.I. No. 1688): both operative January 1, 1955. The Regulations of 1952 (S.I. Nos. 1705, 1706) are amended. A member of a police force alleged to have committed a criminal offence may be suspended from duty. If it is decided that a suspended member is not to be charged with an offence against discipline he may be given full pay and allowances in respect of his period of suspension on his return to duty.

See SUPERANNUATION (CIVIL SERVICE AND METROPOLITAN POLICE STAFF) TRANSFER RULES, p. 127, above.

Probation

PROBATION (NO. 3) RULES, 1954 (S.I. No. 1719): operative January 1, 1955. The salaries of principal probation officers and deputy and assistant principal probation officers are now to be determined in each individual case by the Secretary of State. The allowance payable to a senior probation officer in an area where there is no principal probation officer and the population is more than 250,000 is £125 a year. The maximum salary which may be paid to a temporary probation officer, unless the Secretary of State otherwise decides, is increased to £8 10s. in London and £8 elsewhere. The salaries of whole-time probation officers are also increased by amounts varying from £20 to £90 per annum.

See Home Office Circular No. 253/1954, dated December 30, 1954.

Public Health

PUERPERAL PYREXIA (AMENDMENT) REGULATIONS, 1954 (S.I. No. 1691): operative March 1, 1955. The form of certificate prescribed for notifying the medical officer of health of puerperal pyrexia is altered and the cause of the disease must now be stated if known.

Road Traffic

PUBLIC SERVICE VEHICLES (CONDITIONS OF FITNESS) (AMENDMENT) REGULATIONS, 1954 (S.I. No. 1613): operative December 7, 1954. The marks on public service vehicles showing the number of seated and standing passengers who may be carried must now be in accordance with the regulations for the time being in force under section 9 of the Transport Charges, etc. (Miscellaneous Provisions) Act, 1954. See [1955] Crim.L.R. 54.

Scotland

Juries

As to juror's allowances, see p. 124, above.

Police

See p. 128, above.

Sea Fisheries

WHALING INDUSTRY (SHIP) (AMENDMENT) REGULATIONS, 1954 (S.I. No. 1713): operative December 31, 1954. The length below which a fin whale is to be deemed immature in the southern hemisphere is reduced to 57 feet. The conditions attached to the licence of a ship used to take whales under Part I of Schedule 2 of the Regulations of 1953 (S.I. No. 1713), are altered; hump-back whales may not be killed in the North Atlantic Ocean; baleen whales other than blue whales may not be killed before January 7 in any year and blue whales may not be killed before January 21.

For penalties for contraventions see sections 3 (1) and 6 (7) of the Whaling Industry (Regulation) Act, 1934.

Witnesses

WITNESSES ALLOWANCES REGULATIONS, 1954 (S.I. No. 1626): operative January 1, 1955. The allowances payable to persons attending to give evidence in criminal cases to which the Costs in

Criminal Cases Act, 1952, applies are altered. The maximum allowance payable to a witness to compensate for loss of earnings is increased to 30s. and a similar allowance may now be paid for additional expense necessarily incurred. The daily subsistence allowance is increased to 7s. and the night allowance to 27s. 6d. Where a witness travels by private conveyance and the court is satisfied that this results in a substantial saving of time or is otherwise reasonable the maximum travelling allowance is increased to 6d. a mile; in other cases it is reduced to 2d. a mile. The maximum travelling allowance of persons travelling by foot is reduced to 2d. a mile. The Regulations of 1948 (S.I. No. 1909) are amended accordingly.

Letters to the Editor

Advocacy at Petty Sessions—Written Statements of Charges

Sir,

I have read with interest the first of a series of articles on "Advocacy at Petty Sessions," by B. Fraser Harrison, which appears in the current issue of *The Criminal Law Review*.

At page 13 your learned contributor states:—

> "should the accused have been arrested, however, there is no such informative document, but the police will send a list of the charges if they are asked."

May I as a policeman assure the writer that this is not now the case. Every person who is arrested without a warrant and charged with an offence at a police station is provided with a written statement of the charge or charges, equally comparable to a summons so far as the nature of the charge or charges preferred is concerned. Therefore, unless the document is lost by the accused, there is no need for a defending solicitor to ask the police for a list of the charges.

This police practice follows the assurances given on behalf of the Secretary of State for Home Affairs to the House of Commons when the Law Reform (Miscellaneous Provisions) Bill was being debated last year. In this connection I would draw attention to the Editorial comments at [1954] Crim.L.R. 405 and 492.

Yours faithfully,

S. W. Wills,

Police Inspector.

Windermere.

Books and Periodicals

Reviews:

Police Law. Thirteenth edition. By C. C. H. Moriarty, C.B.E., LL.D. London: Butterworth & Co. (Publishers), Ltd. 1954. xx and 567 and (index) 34 pp. (12s. 6d.)

Moriarty is now 13 editions and yet barely twenty-six years old, which is enough to win it a position among legal textbooks second only to Stone: it might almost bear the subtitle "The Police Officers' Biennial Practice." The reason for its popularity is simply this: that from the point of view of the police officer, on whom the vast burden of administering the law in its initial (and sometimes all-important) stages must rest, Moriarty has literally no rival. It sets out to cover every point of law that an officer may be expected to meet in practice, and to gain success in such an aim within the narrow compass of a volume barely larger than a couple of *Penguins*—and hence an easy fit into any reasonable pocket—is a remarkable achievement.

The book is divided into five parts: Legal Principles, Procedure and Evidence; Offences Against Persons; Offences in Connection with Property; Offences Affecting the Community in General; Traffic Law; and Other Statutory Offences and Regulations. In addition there are appendices covering Speed Limits, the Motor Vehicles (Construction and Use) Regulations, the Prosecution of Offences Regulations, and a gratifyingly brief summary of nine surviving Defence Regulations. There are also the usual Tables of Cases, Statutes and Orders.

How far must one say that Moriarty is for officers only? The student is frankly recommended by the author himself to turn to Harris or Archbold for a full treatment of principles and of the serious crimes: the practitioner in magistrates' courts will not willingly exchange for it his Stone—whose maddening and interminable footnotes so often hide, haystack-like, the needle point in a particular problem; nor will the circuiteer find its lucid and homely treatment of, say, Obscenity (page 113) of much assistance (neither *Hicklin* nor *Secker Warburg* is referred to).

There is, however, an obvious market for Moriarty outside "the Force" both as a concise handbook for lawyers—whether solicitors or barristers—who wish quickly to get, or remind themselves of, the bare outline of some practical point of law, and also for laymen and for their lay advisers in such places as town halls and information bureaux. Motorists might find the book a useful investment for the sake alone of the summary of the law as to traffic which it contains.

EDWARD JACKSON.

Books Received:

Trial of Craig and Bentley. Notable British Trials Series, Vol. 81. Edited by H. Montgomery Hyde, M.P. London: William Hodge & Co., Ltd. 1954. xi and 209 and (appendices) 55 pp. (no index). (15s. net.)

Banning's Military Law. Twenty-fifth edition. By Major P. G. Clark. Aldershot: Gale & Polden, Ltd. 1954. xxi and 311 pp. (no index). (15s. net.)

Law and Disorders. By Sir Carleton Kemp Allen, Q.C. London: Stevens & Sons, Ltd. 1954. vii and 162 pp. (10s. 6d. net.)

Calling Scotland Yard. By Chief Superintendent Arthur Thorp. London: Allan Wingate (Publishers), Ltd. 1954. 220 pp. (no index). (12s. 6d. net.)

Famous Criminal Cases (1). By Rupert Furneaux. London: Allan Wingate (Publishers), Ltd. 1954. x and 205 pp. (no index). (12s. 6d. net.)

Articles:

Magistrate, Vol. 10.
  Young offenders: a national policy, p. 218.

Probation, Vol. 7.
  Juvenile delinquency and illiteracy, p. 61.

Journal of Criminal Law, Criminology and Police Science, Vol. 45.
  Urban police patrol in England and Wales, p. 349.

Solicitors' Journal, Vol. 98.
  Speedier trial—some new suggestions, p. 831.

Law Journal, Vol. 104.
  Summary offence: right to claim trial by jury, p. 838.

Law Times, Vol. 218.
  Dealing in game, p. 304.
  "Permitting," p. 332; Vol. 219, p. 5.
  Magisterial topics, p. 335.

Justice of the Peace.
  Vol. 118.
    The mechanical recording of law court proceedings, p. 776.
    Magistrates' powers of remand when trying informations, p. 792.
    Obscene publications, p. 812.
  Vol. 119.
    Vehicles (Excise) Act, 1949 (further arguments), p. 3.
    Probation and institutional treatment, p. 4.

Police Review, Vol. 62.
  At the French court, p. 890.
  Justice through the looking-glass, p. 926.
  Larceny, p. 928.

THE CRIMINAL LAW REVIEW

Editors

JOHN BURKE and PETER ALLSOP, M.A.

Barristers-at-Law

Editorial

Trivial appeals to the Divisional Court

The Lord Chief Justice, when sitting in the Divisional Court recently, had cause to reprimand those responsible for bringing appeals to the court in trivial cases. In two cases[1] the court declined to interfere in the magistrates' decisions, saying that they did not think that the cases were fit cases for appeal. Concluding his remarks in the earlier of the two cases, Lord Goddard said: "Every time a chief constable finds a police summons is dismissed it is not a good ground for coming to this court."

The fraudulent sub-postmistress

The following information has become available with reference to *R.* v. *Williams* ([1955] Crim.L.R. 18): The sentences on all counts except count 6 were twelve months and were concurrent. On the sixth count, charging the general deficiency, the sentences were greater. As on two of the other counts, relating to falsification of accounts, there was no appeal, the appellants would only derive any practical benefit from the quashing of their conviction on count 6.

At the end of the first day's hearing the court announced that they would allow the appeal against conviction on count 6, would give their reasons the following day, and would not require counsel's attendance.

On the following day, however, the case was adjourned to the day after in order to hear further argument on the meaning of the word " fraudulently." Counsel for the appellants did in fact " have to stay that night in London having been unexpectedly called on to argue a case," although he was not driven to helping himself to a friend's money. It would appear that his argument on the following day was really as *amicus curiae*, in order to assist the court to come to a true conclusion. If they had accepted his definition it would have made no difference to the result.

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[1] *Lloyd* v. *Potts*, January 14, 1955; *Fitzpatrick* v. *Williams*, January 17, 1955.

Previous convictions

The Lord Chief Justice, sitting in the Court of Criminal Appeal, asked that the widest publicity be given to a resolution of the judges of the Queen's Bench Division about the information and history of accused and convicted persons that should be given to the court. We have therefore reproduced this statement in full on page 175.

London Sessions House

The London County Council has published details concerning the replanning of Newington Sessions House. Two new courts, together with their own jury retiring, witnesses and consulting rooms are to be added, and under the new court block there will be cells for 53 male and 20 female prisoners. The existing main building is not to be altered much; the former temporary court is to be eliminated and there will be some changes in office arrangements.

Parliament

Prisons and prisoners

Prisons and prisoners have been the subject of a number of questions in the Commons. The Home Secretary reassured the House that no prisoners convicted of offences involving violence or considered likely to be dangerous have been or will be sent to Eastchurch open prison (H.C. Debates, Vol. 536, col. *46*; Jan. 27).

The Minister of Health and National Insurance will draw the attention of the National Insurance Advisory Committee, which is at present reviewing the contribution conditions of benefits, to the special difficulties of discharged prisoners who are unable to draw unemployment or sickness benefit because their insurance cards are not stamped during their imprisonment. Arrangements already exist in certain cases whereby prisoners can maintain their contribution records (Vol. 536, col. 668: Jan. 31).

Special arrangements are made at employment exchanges to assist discharged prisoners to find employment; they are described in paragraphs 51–59 and Appendix D of the Report on Discharged Prisoners' Aid Societies presented to Parliament in June, 1953 (Vol. 536, col. *142*; Feb. 3).

The Home Secretary has authorised the Prison Commissioners, in consultation with the National Association of Discharged Prisoners' Aid Societies, to initiate an experimental pilot scheme which will provide for the appointment of prison welfare officers, as recommended by the Committee on Discharged Prisoners' Aid Societies, at three or four selected local prisons (Vol. 536, col. *147*; Feb. 3).

Drugs

Both before and since the war the illicit traffic in dangerous drugs in the United Kingdom has been small. Traffic in opium appears to have declined, but that in Indian hemp or marihuana has increased, and this problem is being closely watched. A small number of West Indian immigrants have been convicted of offences in respect of this drug, but none of them was a very recent immigrant. The Government always gives the Permanent Central Opium Board all the help possible (Vol. 536, col. *146*; Feb. 3).

Lighting regulations

Last December the Minister of Transport circulated certain proposals concerning regulations by which owners of cars could leave them without lights if within 100 yards of public lighting. He is now considering the comments he has received concerning these proposals and will announce his decision about such regulations as soon as possible (Vol. 536, col. 153; Jan. 26).

Judicial appointment

Mr. J. E. S. Simon, Q.C., M.P., has been appointed Assistant Recorder of Birmingham.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Review. They should be sent to the EDITOR, *Criminal Law Review*, 3 CHANCERY LANE, LONDON, W.C.2. *Every effort will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Police Control of Intending Criminals

(*Continued from p.* 75)

By GLANVILLE WILLLIAMS, LL.D.
Quain Professor of Jurisprudence in the University of London

Offences of being "found" with certain instruments or weapons

By the Larceny Act, 1916, s. 28, it is a misdemeanour for a person to be found by night (subs. (1)) armed with any dangerous or offensive weapon or instrument, with intent to break or enter into any building and to commit any felony therein, or (subs. (2)) having in his possession without lawful excuse (the proof whereof shall lie on such person) any key, picklock, crow, jack, bit, or other implement of housebreaking. By the Vagrancy Act, 1824, s. 4, it is a summary offence for a person to have in his or her custody or possession any picklock key, crow, jack, bit, or other implement, with intent feloniously to break into any dwelling-house, warehouse, coach-house, stable or outbuilding, or being armed with any gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon, or having upon him or her any instrument, with intent to commit any felonious act. In both instances there is a power of summary arrest under the sections already mentioned (pp. 70, 71).

The time

Under the Larceny Act the finding and possession must be by night (*Harris* (1924) 18 Cr.App.R. 157; for "night" see section 46 (1)). The question arises whether for this purpose "finding" means only a finding of the thing or whether it is enough that the person is found. In *Stevenson* (1905) 69 J.P. 84 the accused was observed walking up and down a street at 5 a.m. (the statutory night-time); he was kept under observation till after 7 a.m. (the statutory day-time), when he was arrested, and was found to be in possession of two files and a screwdriver. The Chairman of the North London Sessions ruled that an offence had been committed. This may appear to be common sense, but it may be doubted whether it is a correct interpretation of the words of the Act. For reasons best known to itself, Parliament has confined the offence under the Larceny Act (section 28 (2)) to one who is found by night in unlawful possession of housebreaking implements. Offences of this kind may, to the cynic, appear to be really applications of the Eleventh Commandment—" Thou shalt not be found out "—for the *finding* in the compromising situation is an integral part of the offence. In the ordinary use of language, if I see a man in the street, and unknown to me he has a housebreaking tool in his pocket, I have not found him in possession of the housebreaking tool. Nor does it make any difference that I suspect him of an intention to commit housebreaking; surely I do not find him in possession of the tool till I discover the tool.

Where a man is arrested before 9 p.m., and housebreaking tools are found in his possession after 9 p.m., while he is in custody, he cannot be convicted under the Larceny Act, because possession under that Act must be possession by a free man (*Harris*, above).

The finding

Under the Larceny Act, s. 28, the accused must be " found " with the weapons or instruments. An interesting question is whether a summary arrest can be justified as for an offence under this section by a finding of instruments after the arrest. The arrest section of the Act (section 41) allows the arrest of any person " found committing " any offence under the Act. Suppose that a constable sees a man at night whom he suspects (from information received) of unlawfully possessing housebreaking tools: he stops him, and, since the man will not otherwise submit to search, he arrests him, takes him to the station, and there searches him. Housebreaking tools are found in the man's possession. Is the arrest justified? Only if, *before* the arrest, the suspect was " found committing " an offence; and the alleged offence here is being found in possession of the tools. It is submitted that the suspect was not found in possession of the tools before his arrest; he was found, and he was in possession of the tools, but he was not found in possession of the tools. Consequently the arrest is illegal.

If this is so, it raises the question what degree of certainty in the mind of the constable is sufficient to amount to a finding of the tools. Suppose that the constable sees a suspicious lump in the suspect's pocket which he believes may be a jemmy and this belief turns out to be correct. Does the constable " find " the jemmy at the moment when he forms his correct suspicion? If not, let us put another case: the constable sees an object in dim light in the suspect's hand, and though he cannot positively identify it guesses (correctly) that it is a jemmy. Examples like these show that there is no firm division between random guessing and certain knowledge; the one shades into the other by imperceptible degrees. A convenient rule would be to say that if the constable sees the outline of the thing (even though it is under the suspect's clothes and is no more than an unusual lump), or if he directly sees any part of the texture of the thing (even though the light is too poor to see distinctly), and if his suspicion that it is a housebreaking tool ultimately turns out to be a correct one, then he has " found " the tool when he first sees its outline or texture and conceives his suspicion. This means that an arrest will be valid, as also will a search of the person arrested to verify the suspicion.

Similar problems arise if the arrest is justified under the Vagrancy Act. The arrest section of this Act (section 6) again refers to persons " found offending " against the Act; consequently if a man is arrested on the ground that he is armed with intent to commit felony, he must be " found " in possession of the arms before the arrest if it is to be legal.

The thing

Without going into a detailed discussion of the offensive weapons and housebreaking implements mentioned in the statutes, it may be mentioned that by the Firearms Act, 1937, s. 23 (5), a firearm or imitation firearm is deemed to be offensive although it is unloaded or otherwise incapable of discharging a shot. This Act creates new offences connected with firearms, including the offence of possessing firearms with intent to injure (section 22), but it gives no new powers of arrest, except as incidental to a search of premises under a search warrant (section 26 (2)).

The intent

Subsection (2) of section 28 of the Larceny Act deals with housebreaking implements, whereas subsection (1) deals with offensive weapons carried by a housebreaker. Under subsection (1) the evidential burden is on the prosecution. There is another way in which this subsection is not so favourable to the prosecution as subsection (2): by a curious judicial construction, an indictment under subsection (1) must specify the building intended to be broken into; and Crompton J. inclined to think that the indictment must also specify the particular felony intended in that building (*Jarrald* (1863) L. & C. 301, decided on the similar words in the 1861 Act). This interpretation was strongly criticised by a former editor of Russell: see now the 10th ed., p. 990n. A contrary view is taken in Canada under an Act with essentially similar wording: *Ellis* [1944] 1 D.L.R. 212. The objection to *Jarrald* is that it reads into the subsection words that are not there, and that (if one looks at the general tenor of the section) were evidently never intended by Parliament. It also severely limits the usefulness of the provision as a means of repressing inchoate crime. It has not been decided whether the similar provision as to offensive weapons contained in the Vagrancy Act is to be read in the same restricted way; and the doubt even extends to the other provision in the Vagrancy Act, as to possessing housebreaking tools with intent to break into a dwelling-house, etc.

Other offences with offensive weapons

By the Prevention of Crime Act, 1953, s. 1 (3), a constable may arrest any person whom he has reasonable cause to believe to be committing an offence under subsection (1), if the constable is not satisfied as to that person's identity or place of residence, or has reasonable cause to believe that it is necessary to arrest him in order to prevent the commission by him of any other offence in the course of committing which an offensive weapon might be used. The offence created by subsection (1) is committed by any person who without lawful authority or reasonable excuse (the proof whereof shall lie on him) has with him in any public place any offensive weapon. See, as to reasonable excuse, *Jura* [1954] Crim.L.R. 378. Subsection (4) provides: " In this section ' public place ' includes any highway and any other premises or place to which at the material time the public have or are permitted to have access, whether on payment or otherwise; and ' offensive weapon ' means any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him."

Disguise by night

By section 28 (3) of the Larceny Act, 1916, it is a misdemeanour to be found by night having one's face blackened or disguised with intent to commit any felony. There is the same power of arrest as before.

Loitering by suspected persons with intent

Another provision in the Vagrancy Act, s. 4, is particularly important in practice. Read in conjunction with section 6, it allows the arrest and punishment of suspected persons and reputed thieves, who frequent or loiter in certain places (including any place of public resort, or any highway or place adjacent to a highway), with intent to commit felony. This provision was originally directed only against persons of general suspicious character. Thus in 1827, Abbott C.J., interpreting the phrase "suspected person or reputed thief" in a local Act, held that it was "aimed at persons previously of bad character, frequenting places where they may be reasonably suspected of resorting for felonious purposes" (*Cowles* v. *Dunbar,* M. & M. 37). It followed that the Act could not be used if nothing was known against the suspect previously to the occasion on which he was arrested. However, by a long course of interpretation the meaning has become widened. In *Ledwith* v. *Roberts* [1937] 1 K.B. 232 the Court of Appeal attempted to impose some limit on the section by insisting that there must at least be a succession of suspicious acts, where nothing is previously known against the accused. But the Divisional Court shows a tendency to restrict this decision, for it has held that the antecedent acts may have occurred on the same day as and within an hour of arrest (*Rawlings* v. *Smith* [1938] 1 K.B. 675; and see Williams, *Criminal Law: The General Part,* § 154). It has even been held that a person becomes a "suspected person" by reason of previous convictions, and can be arrested under the Act, though the police officers who arrested him were unaware of the previous convictions (*Clarke* [1950] 1 K.B. 523 (C.C.A.)).

"Frequenting or loitering"

It is not enough that the person arrested should be a "suspected person," by reason of what is known against him previously or of what he has just done; he must have an intent to commit a felony, and he must be "frequenting or loitering" in a public place, etc., with that intent. In its original form the section spoke only of "frequenting," but the Penal Servitude Act, 1891, s. 7, added the alternative of "loitering," which is the one now generally relied upon. It was held in *Clark* v. *Taylor* (1948) 112 J.P. 439 that a person "frequents" or "loiters" if he remains in a place long enough for the purposes aimed at. Taken literally, this definition would rob the phrase of all restrictive effect, and it is to be noted that on the actual facts of *Clark* v. *Taylor* the accused was on the scene for a substantial time. He had pushed his way through a large group of people three times, when he was arrested under the section as having an intention to pick pockets. Moreover, the court referred with approval to an earlier decision, *Clark* (1884) 14 Q.B.D. 92, in which it was held that a man who walks along a street on a single occasion does not "frequent" it. Yet a man who walks along a street once, with intent to snatch any woman's handbag that he sees, does remain there long enough for the purpose aimed at. It is true that the decision in *Clark* was before the Act of 1891 added the word "loiter," but the question still remains open whether, on facts like *Clark*, there would be a loitering. In a Scottish case, *Williamson* v. *Wright*, 1924 S.C.(J.) 57, a bookmaker's clerk used a motor-car for the purpose of collecting betting slips from agents. While being driven in the car, which had slowed down in rounding a corner, he was handed from the pavement a packet of betting slips. It was held that this was not "loitering" in a street for the purpose of betting, within the Street Betting Act, because slowing down was the appropriate manoeuvre when turning the corner of a street. Whether there could be a loitering in a motor-car, if the slowing down had occurred otherwise than on a corner, was the subject of a difference of opinion, but in any case that question was not before the court.

In a subsequent Scottish case (*Cassidy* v. *Langmuire*, 1935 S.C. (J.) 65) the facts were similar except that the accused was proved to have driven along the streets in the same way on five occasions on one day and on two occasions on another. It was held that this established a "frequenting." Channell J., in another legal context, defined frequenting as "the doing it often" (*White* v. *Morley* [1899] 2 Q.B. 34 at 40). In *Clark* (above) Grove J. said at 98, on the meaning of the word "frequent": "You must show that the accused was seen there more than once at least: how often I decline to suggest."

It is now settled, at least in England, that one may even "loiter" in a motor-vehicle. In *Bridge* v. *Campbell* (1947) 63 T.L.R. 470 the accused was seen on several occasions to drive a motor-van along behind a carrier's van as it made its calls, stopping when it stopped and starting again when it started. His intention evidently was to steal from the van when an opportunity occurred. The Divisional Court had no difficulty in holding that this was a "loitering" within the Vagrancy Act, though in a motor-van.

The upshot is that if the suspect has been seen in the place a few times (perhaps even twice is sufficient), he "frequents." If he "travels indolently and with frequent pauses" (the phrase used by Lord Anderson in *Williamson* v. *Wright*, above), he "loiters." Whether the word "loiter" has any wider meaning than this is not finally decided. The question might arise, for example, if a suspected smash-and-grab raider stops in his car outside a jeweller's shop. Can the single stopping of a car in the highway be said to be a loitering? It comes within the definition in *Clark* v. *Taylor*, though not, perhaps, within the ordinary meaning of the word. Ultimately the only satisfactory solution of the problem is by a legislative redefinition of the power of arrest.

The place

The "suspected persons" provision in the Vagrancy Act is complementary to that concerning persons "found" on premises; for whereas the latter is confined to private premises (above, p. 70), the former applies principally to public places. The list given in the Vagrancy Act is "any river, canal, or navigable stream, dock, or basin, or any quay, wharf, or warehouse near or adjoining thereto, or any street, highway, or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street." To this there was added by the Prevention of Crimes Act, 1871, s. 15, "any highway or any place adjacent to a street or highway." "Place of public resort" includes, for example, a private house being used for public auction (*Sewell* v. *Taylor* (1859) 7 C.B.(N.S.) 160), a railway platform (*Re Davis* (1857) 2 H. & N. 149), and Tattersall's enclosure at a racecourse, even though a charge is made for admission (*Glynn* v. *Simmonds* [1952] 1 T.L.R. 1442). A public-house, theatre or cinema would also be included; but the courts will probably hold that such private premises are places of public resort only while the public are invited to be there (*cf*. *Sewell* v. *Taylor*, above). Hence if a man is found concealed in a cinema when it is closed, he probably cannot be arrested as a suspected person. So also if, while the cinema is open, he is found in a place to which the public have no access, *e.g.*, the office. It is submitted, however, that in each of these cases an arrest would be justified on suspicion of attempted felony at common law.

The meaning of the phrase "any place adjacent to a street or highway" is obscure. Read literally, it would include almost all buildings; but that can hardly have been the intention. It would not be safe for the police to assume that the words cover much more than pieces of open or waste land adjoining the highway. It has, however, been held in Scotland that they include public rooms in a station hotel adjoining the street (*M'Intyre* v. *Morton* (1912) 49 S.L.R. 781). There would seem to be no necessity for this decision, because such rooms are in any event a place of public resort. The question might be important if the accused were found there while the rooms were closed to the public; but in that event it seems doubtful whether they could properly be brought within the Act.

Special offenders

The Prevention of Crimes Act, 1871, s. 7, gives three powers of arrest in respect of those twice convicted of "crime" as specified in the Act (commonly called "special offenders"). The powers are as follows:—

(1) A special offender who is charged with getting his living by dishonest means may be arrested by any constable authorised by a chief officer of police.

(2) A special offender who is charged with being found in any place (whether public or private) being about to commit or to aid in the commission of any offence punishable on indictment or summary conviction, or waiting for an opportunity to commit or aid in the commission of such an offence, may be arrested by any constable. The arrest need not be at the place where the offender is found (*Goodwin* [1944] K.B. 518 (C.C.A.)). If a man is charged with being about to commit an offence, it is not enough to show that he was testing a lock with a view to coming back later to effect an entry (*Goodwin*, above) ; it is not decided whether on such facts he could be charged with "awaiting an opportunity to commit."

(3) A special offender found in or upon certain premises without being able to account for his being there may be arrested by any constable, or the owner or occupier of the property on which he is found, or the servants of the owner or occupier, or any other person authorised by the owner or occupier. The premises specified are a dwelling-house or a building, yard or premises being parcel of or attached to such dwelling-house ; any place of business ; any garden, orchard, pleasure ground, or nursery ground, or any building or erection in such garden, etc. This definition is wider than that for the offence of being "found" in the Vagrancy Act, because it includes business premises ; but, like the offence in the Vagrancy Act, it leaves unprotected theatres and cinemas (even when closed), for these are hardly "places of business," and it also omits governmental and professional premises.

To constitute a man a special offender three conditions must be fulfilled. First, he must be convicted of "crime" as specially defined in section 20 of the Act. For England and Ireland the definition is: "any felony, or the offence of uttering false or counterfeit coin, or of possessing counterfeit gold or silver coin, or the offence of obtaining goods or money by false pretences, or the offence of conspiracy to defraud, or any misdemeanour under [the Larceny Act, 1916, s. 28]."

Other powers of arrest of those with evil designs

By the Larceny Act, 1861, s. 104, and the similar section 41 of the Larceny Act, 1916, a constable or peace officer may arrest any person whom he shall find lying or loitering in any highway, yard or other place, during the night, and whom he shall have good cause to suspect of having committed, or being about to commit, any felony against the Act. The suspect must be taken, as soon as reasonably may be, before a justice of the peace.

The power of arrest given by the sections is somewhat similar in its terms to that under the Vagrancy Act in respect of suspected persons loitering with intent to commit felony (p. 139); but under the present sections the person arrested need not be a " suspected person " as that term is interpreted in the Vagrancy Act; on the other hand, the present sections apply only where the person is found during the night. It seems that, owing to legislative inadvertence, the word " night " for the purpose of the Act of 1861 bears its meaning at common law, *i.e.*, the hours between sunset and sunrise. In its original form, the Larceny Act, 1861, s. 1, defined night as the period between 9 p.m. and 6 a.m.; but this definition was repealed by the Larceny Act, 1916, s. 48 (1) and Schedule. The Act of 1916 does, indeed, repeat the definition of night (section 46), but only for the purpose of that particular Act, not for the purpose of the Act of 1861; consequently there is now no statutory definition of night for the purpose of the Act of 1861.

It may be noted that although the sections refer to a felony committed, they are not needed for this case, for a constable can arrest for felony at common law, wherever the offender may be and whatever the time. The sections extend the law only for suspicions of future felony. There is a power of arrest under the sections although no punishable attempt or other inchoate crime has been committed; in such a case the magistrate will merely be able to bind the suspect over.

The usual application of the provision is that a policeman finds a person loitering in the street in the early hours of the morning: the policeman questions him, and the suspect either refuses to reply or tries to run away or gives unsatisfactory answers. Such conduct presumably gives the policeman reasonable ground of suspicion.

The words " loitering or lying " are a most inconvenient qualification upon the power; do they mean that the police cannot arrest one whom they find running, cycling or driving to commit an apprehended felony? See the restrictive interpretation of the word " loitering " in the Vagrancy Act, above, p. 140.

The foregoing provisions in the Larceny Acts are repeated in the Malicious Damage Act, 1861, s. 57. In this Act the word "night" is left undefined, and therefore means the period between sunset and sunrise. The section applies only to suspected felonies, present or future; and the distinction between felonies and misdemeanours in the Malicious Damage Act is a very complicated one. In most cases malicious damage to property (otherwise than by fire) is only a misdemeanour. Here arrest can only be under another section of the Act, section 61.

The provision again appears in the Offences against the Person Act, 1861, s. 66. The word "night" is again left undefined, and the section again applies only to suspected felonies, present or future. There are also certain local powers of arrest of persons suspected of having evil designs.

Statutory offences and the law of attempt

It has been submitted more than once in the course of this discussion that if a man is found unlawfully in a building having an intent to commit felony therein, his entry into the building is itself a sufficiently proximate act of attempt to justify his arrest and punishment for attempted felony at common law. There is, therefore, no real need for the various offences of being found in buildings with intent to commit felony. Although the test of proximity in attempt is a strict one, it would seem obvious that the act of unlawfully entering a building for the purpose of committing felony in it is sufficiently proximate to the felony. The only doubt is caused by the absence of prosecutions for attempt in such circumstances. In practice the charge is brought under the Vagrancy Act, which seems to indicate a general belief that the circumstances do not show an attempt at common law. A charge under the Vagrancy Act is, however, an unsatisfactory substitute for a charge of attempt, because the ordinary maximum punishment under the Act is only three months' imprisonment (unless the offender has already been convicted of an offence under section 4, in which case quarter sessions may sentence him to imprisonment for one year). By contrast, the imprisonment for attempt may generally be for as long a period as the imprisonment for the consummated crime.

Statutory invasions of the proximity rule

In order to widen the law of attempt by getting rid of the proximity rule, Parliament has on occasion enacted an offence of merely "preparing" to commit crime. This first appeared in the Defence of the Realm Regulations (regulation 48) in the First World War; and it later became a permanent part of the Official

Secrets Act, 1920, s. 7, which makes not merely attempt and incitement but mere preparation to commit an offence under the Act punishable as the substantive offence; and there is a power of arrest. A similar provision appeared during the last war in Defence Regulation 90; but this was criticised by Lord Goddard C.J., who called the statutory offence of preparation "vague and unsatisfactory" (*Gardner* v. *Akeroyd* [1952] 2 Q.B. 743 at 751). In consequence of this expression of opinion the regulation was amended by the deletion of these words.

Lord Goddard's attitude towards the statutory offence of preparation was in rather strange contrast to his interpretation of the term "suspected person" in the Vagrancy Act, for he and the other members of the Court of Criminal Appeal seem to have given this expression a much wider meaning than would have been permitted by the Court of Appeal (p. 140). The same judges who have confined the law of attempt within narrow limits have seen no objection to a wide interpretation of the Vagrancy Act, extending it from a measure against vagrants to a general police weapon against intended criminals. Yet on a charge of attempt the accused has the full protection of the ordinary law of evidence; while on a charge of being a suspected person under the Vagrancy Act, his bad character is a weapon to be used against him even on the question of guilt.

With all respect to Lord Goddard's opinion, it is difficult to understand the objection that the offence of preparation is "vague." The common law test of proximity is so vague as almost to leave one without guide; and words like "suspected person" and "loitering" in the Vagrancy Act are also very vague. But to say that a man commits an offence if he intends to commit an offence and prepares to commit it appears to be as definite a statement as anything to be found in law.

Whether such an offence is "unsatisfactory" must depend on whether it is regarded as a necessary part of the administration of justice or whether, on the contrary, it is regarded as putting an undesirable power in the hands of the police. Yet the fact is that the police already possess very large powers under the Vagrancy Act. A suspected person who loiters in the street with intent to commit felony can be apprehended and convicted though he found no opportunity of carrying out his purpose; an overt act towards carrying out the intent is not necessary, except in so far as the loitering is such an act (*per* Hawkins J. in *Clark* (1884) 14 Q.B.D. 92 at 101–2). This is a pretty tenuous act of "preparation," yet it is punishable even under the present law. And the criminal courts, so far from expressing dissatisfaction with the policy of the Vagrancy Act, have on the whole given it a generous interpretation.

The objection to the Vagrancy Act from the point of view of legislative drafting is that, as has been shown, it is subject to arbitrary limits, and therefore works arbitrarily. Take, for example, the limitation of place. A suspected person cannot be arrested under the Act unless he is found in one of certain places such as the highway. Yet his intent need not be to commit a felony on the highway: it may be to commit a felony anywhere *R.* v. *Brown* (1852) 17 Q.B. 833). There is no sense in making the validity of the arrest depend on its being effected in a particular place which has no necessary connection with the intended crime.

Presumably, the objection to the offence of preparation is that very remote acts might come in. In practice, however, the prosecution would be limited by the necessity of proving a firm intention. Where an offence of preparation has been created by the legislature, prosecutions brought for it do not suggest a danger of abuse, or any undue difficulty in deciding what is meant by preparation. In the case in which Lord Goddard criticised the offence (*Gardner* v. *Akeroyd*, above), the facts were that an assistant in a butcher's shop prepared tickets showing prices in excess of those permitted and attached them to parcels of meat. It was admitted that on these facts the assistant was guilty of the offence of preparation to commit an offence against the Defence Regulations and the only question made was as to the responsibility of his master under those Regulations. It seems likely that the assistant would equally have been guilty of an attempt to infringe the Regulations, for he had actually affixed the tickets to the meat. If he had not affixed the tickets he would not have been guilty of attempt (above, p. 66), though still guilty (under the Regulations as they then stood) of preparation. It is conceived that on facts like these the offence of preparation gives a sensible result.

If we had a general offence of preparation it would be possible to repeal much of the legislation discussed in this article, such as the relevant sections of the Vagrancy Act, the Larceny Act, and the Prevention of Crimes Act. It would be desirable to settle the question whether loitering is preparation by adopting the words of the Prevention of Crimes Act, 1871, s. 7, expressly taking in those who are awaiting an opportunity to commit an offence. This is a much better formula than " loitering or frequenting."

Trials of a Colonial Beak

(*Continued from p.* 105)

By Oliver Shaw, *Barrister-at-Law*

"Reconciliation"

An interesting and most useful provision in the Criminal Procedure Code is that which permits and, indeed, encourages, in proper cases of course, what is referred to as "reconciliation," which can be effected with the consent of both parties, that is the police and the defendant, and on such terms as the court considers appropriate. The latter condition usually means in practice the payment of a small amount of compensation to the injured party. The sort of cases where I used this clause were petty assaults, frequently between members of a family, or when the accused was under the influence of drink, and in minor breaches of the peace or malicious acts causing damage of a trivial nature. Very frequently in such cases, although the defendant was not prepared to plead "Guilty," and intended to fight the case to the bitter end, he would none the less be prepared to settle for a small sum, and thus avoid the trouble of a trial and the possibility of a conviction being recorded against him. Everybody would be happy and a possible civil action would be avoided. It should be borne in mind that, under the circumstances prevailing in West Africa, petty assaults and acts of damage to property are very much more frequent occurrences than in England, and the police are brought into such cases more readily. I found the provision extremely useful, although the accused in such cases often tried to "bid up" the amount of compensation, a practice which I strongly discouraged.

Politics

The new democratic form of government, which has been in force since 1950, brought with it a crop of so-called "political" cases. The new Constitution being somewhat of a novelty, it is perhaps only natural that some of the voters should take their politics with single-minded zeal. In these circumstances, to black the eye of a member of the rival party, or to stone his car, or burn the party flag, the symbol of a vile heresy, is an act of patriotism. These "political" cases used to arise with great frequency, especially after a "rally" and were a very great nuisance to the magistrate. To plead "Guilty" would be an act of treason to the party, and the result was nearly always a bitterly contested case with varying degrees of perjury by witnesses on one or both sides, and highly paid counsel from Accra jousting mightily in the arena over the burning of a flag worth 15s. or the breaking of a pane of glass valued at £1. The "reconciliation" procedure referred to above could not be utilised in these cases as neither side would agree to such a compromise with justice. I need hardly say that in some of these cases it was extremely difficult to arrive at a confident verdict.

Sale of judgments

Offences involving corruption on the part of those who sit on native courts occur not infrequently, as, for example, the selling of judgments. I had a case in which the president of a native court had promised a certain gentleman a judgment in a land dispute of long standing, and in which the whole village was interested, in return for a large sum of money, which he accepted. He made the mistake, however, of accepting an even larger sum from the other party to the case, and when the first gentleman had judgment given against him he was not unnaturally aggrieved, and went straightway to the police to complain of the shabby treatment he had received. Cases like this often result in acquittals because the witnesses of the complaining party are accomplices, but in this particular case there was sufficient credible corroborative evidence, and I recorded a conviction with some confidence and gave the prisoner twelve months' imprisonment with hard labour, which was the limit of my powers of punishment.

Pleas of guilty

The African, like the Oriental, sets considerable store by "saving face." One example is the "reconciliation" method already described. Sometimes he will on no account plead "Guilty," but he may be prepared none the less to pay compensation to the complainant. In the same way he will frequently say, when asked to plead, "Guilty with explanation." Having recorded the plea the magistrate listens with consternation to the explanation which is often that the wretched prisoner did not do it at all. When asked why he pleads "Guilty," but now says that he did not commit the offence, he will often say: "I did not want to waste your Worship's time," or "I said 'Guilty' because I have business to attend to and do not wish to incur the expense and trouble of a trial with possibly several adjournments." Or he may plead

" Guilty " to stealing and then say that he only intended to borrow the article, and so on. Such cases caused considerable embarrassment to me at first, but I soon developed a technique by which I satisfied myself, in my own mind, whether it was proper to accept the plea or to amend it to " Not Guilty " and allow the trial to proceed on that basis.

In many cases it was a genuine but mistaken admission of guilt. An example which comes readily to mind is that of manslaughter. The idea of " mens rea " is somewhat sophisticated, and one has only to recall our own early legal history to appreciate this. The Anglo-Saxon and Norman methods of trial clearly illustrate the point. The illiterate African lorry driver, therefore, when he is charged with manslaughter—and if he is not represented, which is the usual case—will often plead " Guilty " because he does not deny that someone was killed. But he may say in his " explanation," that his steering column suddenly broke, or something of that sort. I have more than once heard such a defendant say (when district magistrates could try manslaughter cases) that he pleaded " Guilty " because he did not deny killing somebody, but that he did not appreciate at all the idea of criminal negligence. One has to be very careful in such cases to see that nobody should plead " Guilty " to a serious charge of that kind under a misapprehension, bearing in mind that there is no system of legal aid or even poor persons' defences in the magistrates' court.

Police prosecutions

The prosecutions in the magistrates' courts are conducted almost entirely by African police officers. In the larger stations two or three inspectors (the highest warrant officer class) will act as permanent prosecutors, and occasionally an assistant superintendent (lowest officer class) will conduct a case. In the more remote country courts, sergeants, corporals and even constables are responsible for presenting the cases for the Crown. It is comparatively rare for European officers to appear in court personally. This is a pity because, as in this country, the vast majority of cases are dealt with in the magistrates' courts, and even the High Court cases all pass through the magistrates' court on the way. It would not matter so much if the African prosecutors were given proper and adequate training in the ethics, etiquette and technique of their duties but, unfortunately, this is not the case. This is not meant as a disparagement to the African prosecutors, the majority of whom show the utmost keenness for their work and are willing to learn. Indeed, many of them are crying out for knowledge and spend their own money in buying textbooks from Chancery Lane.

But they have simply not had the training to perform their duties adequately. A minority of them are unfair and out to get a conviction at any cost. I have frequently known cases where written statements made by an accused person, in denial of the charge and giving his explanation of the matter, are neither put in evidence by the prosecution nor handed over to the defence. Verbal denials or explanations by an accused, when interviewed by the police or when arrested, are hardly ever adduced in evidence by the police, many of whom think that anything said before the accused is cautioned is inadmissible. On the other hand, written statements amounting to an admission are invariably put in. My experience leads me to believe that many of the latter are taken in circumstances which, at the least, cast considerable doubt on their proper admissibility as evidence.

I remember a case which I tried in which two female witnesses constituted the main evidence for the prosecution, which depended on questions of fact which the accused denied. The case was strongly contested and the accused was represented by counsel. The police had taken a written statement from another witness, a chief or elder of the village. This witness had been subpoenaed by the prosecution but he was not called. The defence counsel apparently got to hear that the chief was present at the time and place of the alleged incident, and he asked my permission to call him as a defence witness. He had never been handed a copy of the statement made by the witness to the police, although the latter did not use it themselves. In these circumstances I, of course, acceded to his request. The chief in his evidence said most emphatically that what the two main prosecution witnesses had alleged did not take place, and that he had said so in his written statement to the police. Instances of this kind are, unfortunately, fairly common. From my own experience I can vouch for the fact that in minor offences the police sometimes resort to " agent provocateur " practices.

Although a small minority are the reverse, the great bulk of the African police prosecutors observe the customary usages of the court and are models of politeness and courtesy. One, in particular, used to call me " Your Warship " with embarrassing frequency.

One thing these police prosecutors have learned to do thoroughly is to produce exhibits for the inspection of the court. In fact, they produce them on every conceivable and some inconceivable occasions. If a sheep has been stolen and recovered they will produce the animal in court, whether it has any distinctive characteristics bearing on identity or not, and until the case comes on, one's concentration is apt to be disturbed by a series of loud "baa-baas." I remember a case where a cow had been maliciously killed by the accused, and its hide was laid before me, although there were several eyewitnesses to the fact whose testimony made this proceeding quite unnecessary. On another occasion the police had ready an elaborate pulley system wherewith to haul up to my first floor court a large-sized organ, the subject of the charge. In yet another instance the prisoner was charged with indecent assault on a young girl, following which he was alleged to have given her a shilling. With great solemnity the police prosecutor produced for my inspection the identical coin which had been so unworthily proffered.

I have referred earlier to the difficulty some African prisoners seem to encounter in grasping the idea of "mens rea." Some prosecutors find it equally difficult and this is illustrated clearly in matters involving negligence in driving motor vehicles. If there is an accident of any kind it follows of necessity in their eyes that someone is culpable. The fact that the steering column has broken, or the front off-side tyre has burst, is of no consequence. In the same way, in the simplest case of careless or dangerous driving, I have been amazed at the number of times the wrong person has been prosecuted. I remember that one of the earliest cases I tried in the Gold Coast was one in which two vehicles collided. The driver of one was prosecuted and acquitted. The driver of the second vehicle was then charged, and I found on the clearest possible evidence that he was the one who had been guilty of negligence. When they cannot make up their minds which of two drivers is to blame the police frequently charge them both on the same charge sheet, leaving it to the court to decide which of the two prisoners, if either, is guilty.

A class of policeman which is used a lot on motor traffic control is that known as "escort" police. They are a lower category than the others, who are called "general" police, and wear a special uniform including a blue woollen jersey and red hat shaped like a fez, with a tassel. Most of them are of the Hausa (Mohammedan) tribe and illiterate. Some are extremely good policemen and many have good war records and wear a row of campaign ribbons. Being unable to make notes in their books, other than figures, they have to rely upon their memories, which are sometimes good and sometimes not so good. Their discipline is almost always excellent and they are very smart and soldierly in their bearing. One might regard them as the guardsmen of the police force as they are most impressive on parade, though not always so in the witness-box.

A third category of police was that known as the Native Authority Police. These were formerly employed by the local chief or State Council under the old Constitution. I believe they are now appointed by the local authorities set up within the last three years under the new constitution and based on the English model. Many of these policemen turned out to be ex-convicts, and most of them were illiterate.

My scrap-book contains the following advertisements taken from Gold Coast newspapers in 1952:

> Wanted immediately, two efficient, intelligent and reliable illiterate Police Officers. Attractive salary. Apply now to the Chairman, Finance and Staff Committee, etc.
>
> Wanted by Local Council, one Council Clerk, one Literate Constable and four Illiterate Constables. Send in a written application with full qualifications to Committee Secretary. . . .

(*To be concluded*)

Advocacy at Petty Sessions

By B. FRASER HARRISON, *Solicitor*

(*Continued from p.* 93)

The Plea and the Pleader

The plea

Whatever they may ultimately plead at the trial few clients admit at the outset that they have committed an offence. If, in spite of the advice he receives, a client wishes to deny the charge, his solicitor accepts his instructions; but the possible repercussions of fighting a hopeless cause should be clearly pointed out to the client. Judges and magistrates are human and their tempers are unlikely to be sweetened by a meretricious and long drawn-out defence.

The art of advocacy lies in asking the minimum of questions and only those the answer to which is reasonably certain. It is always difficult to limit cross-examination in a hopeless defence and useless questions are liable to produce unfortunate replies. If a small child, old lady or anyone who invites sympathy is subjected to a searching cross-examination which the court believes to be purposeless, the sentence may reflect the court's displeasure.

When the accused pleads "Guilty"

The normal sequence when the accused pleads guilty is for the prosecutor to relate a summary of the allegations against the accused and to call a witness to confirm the accuracy of the summary. The accused's advocate then addresses the court in mitigation. The advantages of pleading guilty are that the accused's wrongdoings are spoken of once and not repeatedly as each witness goes into the box; furthermore, his advocate's plea in mitigation is not tested by cross-examination.

The pleader—barrister or solicitor?

Although one purpose of these articles is to assist solicitors to act as advocates, it should be made plain that there are many occasions when it is judicious to brief a barrister. Some cases are so complicated that it would not be feasible for the solicitor to set aside the time necessary to search for the law; others are obviously better presented by a barrister and at times the client himself may suggest that a barrister be briefed.

Counsel, solicitor and client

The client chooses his solicitor, but normally his barrister is chosen for him. The solicitor should brief the most capable barrister his client can afford; if, as is sometimes the case, the most suitable counsel is not available, there will usually be an adequate alternative, but at no time should any suggestion be made to the client that he has to accept second best, or the client's faith in his legal advisers may be lost.

However cordial the solicitor's social relations with the barrister may be, formal address is essential when the client is present. The barrister must be treated with the deference that is his professional due; he should not, for instance, be addressed by his christian name or plain surname, but always as "Sir" or "Mr. So and So." These modes of address should be adopted no matter what are the relative ages and seniority of the individuals concerned. This is not merely professional courtesy; it is wise policy. When both branches of the profession behave with correctness towards one another, as well as towards the client, professional prestige cannot but be enhanced, and the layman's respect and confidence ensured.

Committal Proceedings

Preliminaries

The purpose of a committal proceeding is to avoid overloading the assizes and quarter sessions with trials of accused persons against whom the prosecutor has insufficient evidence to substantiate a case.

Only when the examining magistrate has heard the evidence called by the prosecutor and by the accused (if the latter decides to call any) does he decide that there is sufficient evidence to put the accused on trial by a jury.

The prosecutor is expected to produce the evidence which he intends to rely upon at the trial, although he may call additional witnesses at the trial if a copy of the witnesses' evidence is given to the accused in writing before the witness is called.

Thus, at the moment that the trial commences, the accused knows the evidence in chief of the prosecutor's important witnesses.

A committal usually begins by the accused's being asked to confirm his name and address ; the charge is read over to him, but he is not asked to plead. The prosecutor, if the case is complicated, makes a brief opening speech and then calls his witnesses.

The accused or his advocate may cross-examine the prosecutor's witnesses and call witnesses as he wishes, and the accused may give evidence himself.

Unless the prosecutor altogether fails to make out a case, most magistrates will commit the accused, even if he has called witnesses ; and by giving evidence or calling witnesses not only does the accused disclose his defence, but gives the prosecutor the opportunity to obtain witnesses to refute it.

An unskilled advocate can, without calling evidence, give away his client's defence by the questions he asks ; these should, therefore, be limited to what is essential.

Committal proceedings tend to be informal ; the prosecutor is permitted to lead to a degree that would not be tolerated elsewhere, and other rules of evidence are waived. Although an accused's advocate may object to these transgressions, there is a tendency to allow the prosecutor to " get away with it," and there is a more important reason for not making a number of objections ; to do so draws the prosecutor's attention to the defects in his case and he has ample time in which to repair them.

The fact that evidence is recorded at the committal, with or without objection, does not necessarily mean that it is admitted at the trial. Only the judge, not the jury, sees the depositions and nothing is lost by allowing the prosecutor to assume that all is well.

Objections and cross-examination withheld until the trial can be devastating.

Time to speak

Upon two occasions only is it safe to expose the accused's defence:

(a) When the defence is an alibi, *and the alibi is so strong that the police investigation which will undoubtedly follow its disclosure will merely be additional proof of its truth.* Seldom is an alibi sufficiently strong to allow this risk to be taken.

(b) When the accused is relying upon insanity as a reason or excuse for his misdeeds. If this is so, the earlier that the authorities are aware of the fact the better, so that the prison doctor may have the accused under surveillance. Although the defence may have the accused medically examined, the judges tend to take more notice of the prison medical officer than of a civilian practitioner.

The defence of insanity is not one to undertake lightly. There are innumerable difficulties and an inexperienced solicitor would be wise to brief counsel for the committal if this is to be the defence.

Taking the depositions

The evidence given at a committal is written down by a clerk as the witness gives it. His deposition, as it is called, is not complete until both the witness and the examining magistrate have signed it.

Some of the busier courts have shorthand writers taking down the evidence in relays, one writing while the other transcribes. This is the least obtrusive method, but it is also costly, and so less frequently used. It is more usual for the evidence to be written in longhand or typed in the form of a consecutive statement, the actual questions and answers being paraphrased.

Although the wise advocate asks few questions at the committal, he should ensure that the deposition contains what the witness said and not what the prosecutor wishes he had said. After a series of questions, during which nothing has been written, the clerk often queries, " How much of that do you want written down? " and the prosecutor only asks for what assists himself. The taking of a deposition is a tedious duty and clerks will err on the side of brevity, so the accused's advocate must ensure that replies in his client's favour are also in the deposition.

Submission of " No Case "

At the close of the prosecutor's evidence the accused's advocate may submit that the prosecutor has failed to make out a case against the accused. When he makes this submission he remembers that at this stage the prosecutor does not have to prove the accused guilty beyond all reasonable doubt; he merely has to produce sufficient evidence for the magistrate to think it proper for the accused to be tried at a higher court. Magistrates rarely decide that there is not sufficient evidence to commit the accused, especially if he is well known or if the allegations are serious.

The fact that the accused is not committed does not amount to a dismissal of the charge and, if the prosecutor is not satisfied with the magistrate's decision he may apply for a Bill of Indictment. With this in mind an advocate does not " show his hand " when making a submission.

Calling the accused

Having heard the prosecutor's witnesses and any submission by the accused's advocate, the examining magistrate, in compliance with the Magistrates' Courts Rules, 1952, rule 5, asks the accused whether he desires to give evidence himself or to call witnesses. The form in which the accused is asked contains the warning that he has no need to do either. *There may be occasions when it is wise to call the accused and other evidence, but they are so rare that the inexperienced solicitor should NEVER do so.*

The accused himself must answer the questions asked of him by the magistrate; that is if he wishes to reply at all. The usual reply, a noncommittal one, such as, " I have nothing to say at this stage," is the least damaging.

The magistrate's decision

After the accused has given evidence, called witnesses, or, if he is wise, declined to do more than give a formal answer, the examining magistrate decides whether to commit the accused to take his trial at the assize or, more usually, quarter sessions.

Binding over

By the Magistrates' Courts Act, 1952, s. 5, the witnesses are bound over to appear at the trial and give evidence in one of two ways:—

(a) Conditionally, which means the witness has no need to attend the trial unless given notice so to do, or

(b) Generally, in which case the witness must attend the trial.

If the defence think a witness will be required at the trial the advocate should ask for the witness to be bound over " generally." When a witness has been bound over " conditionally " and the accused later decides he requires him at the trial he gives notice to either (a) the clerk to the magistrates' court which committed him, if the assize or quarter sessions has not already opened or, (b) if it has, to the Clerk of Assize or the Clerk of the Peace as the case may be. It is then the duty of whichever clerk receives the notice to give notice himself to the witness that he is required to attend the trial.

The witnesses ought to be bound over only at the end of the committal after the magistrate has decided to commit the accused, but, in order to avoid wasting the witnesses' time, they are frequently bound over immediately they have given their evidence and signed their depositions.

Applications

When all other business has been completed the accused may make application for bail and also for legal aid for his defence at the trial.

Depositions

A short time after the committal has closed the accused's solicitor writes to the clerk to the magistrates for a copy of the depositions and he has then a copy of all the evidence the prosecutor will call at the trial.

(*To be continued*)

Murder Without A Body—The Forensic Science Aspect

By WILSON R. HARRISON, M.SC., PH.D.,
Director of the South Wales and Monmouthshire Forensic Science Laboratory

R. v. Onufrejczyk

"At the trial of a person charged with murder, the fact of death is provable by circumstantial evidence, notwithstanding that neither the body nor any trace of the body has been found and that the accused has made no confession of any participation in the crime. Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt.

"The circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for."

These were the words, quoted from the judgment given by the New Zealand Court of Appeal in *R.* v. *Horry* [1952] N.Z.L.R. 111, used by Oliver J. to the jury who were trying the case of *R.* v. *Onufrejczyk*.

The judge said that he particularly recommended his last sentence to the consideration of the jury, warning them that if they found that the proof fell short of that, then whatever might be their suspicions, they should acquit the accused man.

The crime for which Michal Onufrejczyk, a sixty-year-old former Warrant Officer in the Polish Army was convicted was that of the murder of Stanislaw Sykut, fifty-six years of age, his fellow Pole and partner in the small dairy farm Cefn Hendre near Llandilo, Carmarthenshire, on or about December 14, 1953.

The investigation of the crime was rendered very difficult by the fact that Onufrejczyk could speak but little English so that all interrogation of him and of many of the more important Polish-speaking witnesses in the case had to be done through interpreters. The prosecution was greatly embarrassed by the absence of a body, hence the newspaper title—The No Body Murder—for in spite of a most thorough search of Cefn Hendre farm and of the surrounding country, no recognisable trace of Sykut's body has ever been discovered.

An uneasy partnership

According to the prosecution, the motive for the crime was greed and Onufrejczyk's well-founded fear of being dispossessed of the farm by the legal action which had already been commenced by Sykut to bring the partnership to an end. Evidence was called by the prosecution to show that Onufrejczyk was doing very badly as a farmer, for since taking over the farm in 1949 he had had two partners, both of whom were so anxious to leave that they were content to receive appreciably less than they had paid for their share in order to be free of both Onufrejczyk and the hard unremitting toil entailed in working this remote hillside holding.

Sykut arrived in Cefn Hendre in March, 1953, and entered into a partnership agreement with Onufrejczyk on April 10, 1953, but only one month afterwards he instructed his solicitor to prepare six months' notice to terminate the partnership in November. This meant that the farm would have had to be sold by auction unless Onufrejczyk or someone else was prepared to buy out Sykut.

There was ample evidence to show that Onufrejczyk by no means approved of Sykut as a partner and that he was making strenuous but unsuccessful efforts to borrow money to buy Sykut out and so save his livelihood. There was ample evidence that the relations between the two men were bad and that Onufrejczyk was not only constantly making threats about Sykut, but that he had actually assaulted him during May in a manner sufficiently serious to justify a police warning being given to him. Onufrejczyk made no attempt to deny the allegations made by Sykut when the police called at Cefn Hendre farm.

During October, 1953, Sykut, for some reason not disclosed, left at the house of a fellow Pole, Mr. Biskup, two steel cases containing suits and underwear; these two cases have never been reclaimed by Sykut.

Although the two men lived alone at the very inaccessible farm and rarely received a visitor, Sykut was fairly well known in the district. He was in the habit of regularly visiting friends and acquaintances and in particular was seen by a number of people during the days preceding December 14. On that day he visited a local blacksmith in connection with the shoeing of a horse and also made an appointment—which he never kept—to meet a friend on December 16.

In spite of most extensive inquiries which centred at Cwmdu, the nearest village to Cefn Hendre farm, and spread as far afield as Poland where Sykut's wife is still living, no one except the accused has spoken of seeing Sykut alive after December 14, 1953.

Forged documents

The greed motive was developed by the prosecution in evidence called to show the accused attempted by means of a number of forged documents to vest in himself the half share in the farm belonging to the man who had disappeared.

These documents were six in number and three of them were addressed to a solicitor in Llandilo, the small town nearest to Cefn Hendre farm. They purported to come from Sykut and two were in the form of signed agreements to the effect that for the sum of £450 in cash and a promissory note for £150, Sykut was transferring his share of the farm to Onufrejczyk. The third was a letter signed " S. Sykut " in which the solicitor was asked to complete the legal formalities connected with the transfer of the farm to Onufrejczyk. The fourth document was a typewritten list of farm implements and stock also bearing a signature " S. Sykut." The fifth was a letter bearing a signature " S. Sykut " addressed to the Mr. Biskup with whom he had left the two steel boxes, saying he was returning to Poland and asking him to give the boxes and their contents to Onufrejczyk. The sixth was another letter purporting to come from Sykut to a Mrs. Pawelec who lived near Cefn Hendre, telling her he was returning to Poland after selling his share of the farm to Onufrejczyk.

It was alleged by the prosecution that the signatures of Sykut on all these documents were forgeries. To establish this, evidence was first called to show how these documents originated. It appeared that the accused paid a visit to London on December 21 and 22 and whilst there called on a Mrs. Pokora who was well known to him and told her that Sykut was leaving for Poland. He asked Mrs. Pokora to write out for him the body of the forged documents referred to above. When Mrs. Pokora was told that Onufrejczyk was going to meet Sykut to get them signed she acceded to this rather strange request.

Further evidence showed that Onufrejczyk then made a number of unsuccessful attempts to persuade several Polish friends in London to sign these documents with an imitation of Sykut's signature, a genuine specimen of which he apparently had with him. No evidence was forthcoming as to who had actually signed these documents, but signed they were, when later produced to the police.

Whilst in London, Onufrejczyk made a number of contradictory statements to various Polish friends and acquaintances. To some he said that he had seen Sykut in London, whilst to others he stated that for some hours he had waited in vain for him to keep an appointment.

Further evidence was given that when Onufrejczyk discovered that the signed documents he possessed did not give him a clear title to the farm he tried to persuade one of his friends to return to Llandilo with him and impersonate Sykut before a solicitor so that the documents could be amended.

There was police evidence to the effect that on December 30, 1953, when a routine check of aliens in the district was being made, Sykut was discovered to be missing. When interviewed by the police about this, Onufrejczyk said that Sykut had left the farm at 8 p.m. on December 18 in company with three strange Poles who had called to see him, but that before leaving, Sykut had sold his share of the farm to him, Onufrejczyk, for the sum of £450 in cash and a promissory note for £150.

Onufrejczyk declared that the transaction had taken place at the farm in the presence of the three strangers and that one of them, Jablonski, had at Sykut's dictation, drawn up the documents and then signed as a witness to Sykut's signature. He said the cash he had paid Sykut had been borrowed from Mrs. Pokora who had sent him the money as a loan by registered post.

Onufrejczyk was confronted with the statement of Mrs. Pokora that she had neither lent him the money nor had acceded to his curious request to her to pretend to lend him the money by sending two parcels to him by registered post and also that the documents transferring the farm had been written out by her at Onufrejczyk's dictation. Onufrejczyk at first emphatically denied the truth of this, in a written statement, but later in this same statement he withdrew this denial, substituting an involved story of having met Jablonski at Paddington on December 21, 1953. Onufrejczyk went on to state that Jablonski gave him written instructions from Sykut regarding the preparation of the documents and that after he had persuaded Mrs. Pokora to write them at his dictation, Jablonski took them from him and later returned them to him, signed by Sykut and witnessed. He himself had not seen Sykut in London on December 21.

Examination of the signatures

Expert evidence was given by the Director of the Home Office Laboratory, Cardiff, concerning the signatures on these documents and also those purporting to be Sykut's on four cheques later discovered at Cefn Hendre.

Considerable difficulty was encountered in the examination of the questioned signatures of Sykut on these documents because examination of those signatures of Sykut on other documents which could be proved to be genuine, showed that Sykut was by no means a practised or a skilful writer and that there existed a considerable degree of variation in letter design in the genuine signatures of Sykut. Fortunately it proved that all the genuine signatures of Sykut were characterised by fluent writing with well separated though poorly formed letters, and, amongst other features, a most curious orientation of the "y." On the other hand, the signatures purporting to be those of Sykut on the documents produced by Onufrejczyk which had the effect of transferring the farm to him, as well as those on the four cheques, were obviously "drawn" in a hesitant manner with very cramped letters and a totally different orientation of the "y" from that which was characteristic of the genuine signatures.

As the questioned signatures were so consistently different in many respects from the genuine, it was stated by the expert witness, that in his opinion the only reasonable explanation of their many divergences from the normal signatures of Sykut, was that they were almost certainly forgeries.

At the request of the police who suspected that he had perpetrated the forgeries, Onufrejczyk had written several examples of " S. Sykut " so that his handwriting could be compared with that of the questioned signatures. Expert comparison of these specimens of handwriting with the questioned signatures yielded no evidence that Onufrejczyk was responsible for the forgeries. This failure to connect the handwriting of Onufrejczyk with that of the forgeries did not serve to exonerate Onufrejczyk as the forger because it rarely happens that any effective comparison can be made between natural handwriting and what is in effect a careful " drawing " of another person's signature.

The search for the dead man

A considerable proportion of the evidence tendered by the prosecution concerned inquiries which had been made to establish the extreme unlikelihood of Sykut, an alien, having left the country either by sea or air without some record of the fact being available.

This was followed by the evidence of friends of his who had been in almost daily touch with Sykut until December 14, 1953, before which date they had heard nothing of his leaving the farm and since that day they had heard not a word from him.

The court heard of a substantial amount of unclaimed money left in the Savings Bank, of clothes left with friends not collected after nearly a year and of letters still waiting for Sykut at the local Post Office. All this evidence showed that Sykut's departure from the scene on December 14 was abrupt and final, with no hint of premeditation.

Having established a motive for murder, and the failure of inquiries to explain what had happened to Sykut after he was last seen on December 14, the prosecution then called a number of witnesses to describe what was discovered when Cefn Hendre farm was searched in the second week of February, 1954, by the Carmarthenshire Police assisted by the Director and Staff of the Forensic Science Laboratory.

Blood stains

The Police Liaison Officer at the Laboratory described the kitchen at the farm as he had found it, with its filthy floor of good quality tiles set into cement, stained walls covered with distempered plaster-board, crude exposed wooden beams supporting the low ceiling, the relatively enormous fireplace set back in a recess, as well as a wooden dresser near one of the doors. Evidence was given as to the presence on three of the four walls and ceiling of the kitchen and also the wall of the passage from the kitchen to the outside, of many tiny spots and of a curious dark mark which looked as though a hand had grasped the dresser. He also spoke of the subsequent removal of a piece of plaster-board from a wall in the neighbourhood of the fireplace for more detailed examination at the Laboratory.

A biologist at the Laboratory gave evidence that many of the numerous spots on the walls and the comparatively few on the ceiling were blood spots and that the majority of those he tested, a large number chosen at random, were human in origin. The plaster-board had yielded a very significant piece of evidence; this was the discovery of the double impression of a reversed signature of Sykut undoubtedly caused by a wet signature of his having been pressed against the plaster-board which was being used as a blotter. The two impressions had obviously been made from the same signature. Superimposed on one of the impressions was a human blood stain. The significance of this evidence was that it proved that at least some of the blood had been deposited on the wall after the arrival of Sykut at Cefn Hendre.

Another discovery was even more significant—in one of the human blood stains on a wall near the fireplace were found two minute fragments of bone. These could not be tested serologically for origin because of their association with the human blood spot in which they were discovered. On microscopic examination, the structure of these bone fragments indicated that they consisted of animal bone—for the purpose of such investigations the human being is considered to be included in the animal kingdom.

The dark material in the shape of a hand print on the dresser was also proved to be human blood. In spite of a thorough search, no positive reaction for blood could be obtained anywhere on the floor despite the extreme delicacy of the test which had been utilised.

The distribution of the blood on the walls was most curious; although several thousands of stains were present, the total amount of blood represented by all these stains probably amounted to less than a teaspoonful.

Police evidence was given that, when challenged with the presence of the blood stains in the interview on February 12, Onufrejczyk said that he knew nothing about them, but on February 23 he recalled that the blood on the dresser was that of Sykut whom, one day back in the early summer, he had found in the kitchen shaking his bandaged hand after having cut three of his fingers in the mowing machine which was at that time being used in the fields. Onufrejczyk further explained the blood on the panel removed from the neighbourhood of the fireplace as being rabbit blood which had come from rabbits he had hung on hooks nearby.

The opinion of the pathologist attached to the Forensic Science Laboratory was that the nature of the blood spots indicated that they consisted of blood freshly spilled either from a living body or from one recently dead by the application of considerable force. With respect to the absence of any trace of blood on the floor, he thought that whilst it might be difficult to wash a floor entirely clear of blood, bacterial action due to the filthy condition of the floor might very well result in the total destruction of the remains after washing of any blood spilled on the floor in December, by the time the tests were applied two months later in February.

The defence

The defence attacked the recollections of the witnesses who had accused Onufrejczyk of using threats against Sykut and it was whilst this evidence was being dealt with that the difficulty faced by counsel in dealing with evidence given in a foreign language was shown to be formidable in spite of the best efforts of the interpreters to translate abuse and threats uttered in Polish in such a manner as to convey their real significance in English.

The police were questioned as to their knowledge of cases of other Poles disappearing from this country without trace.

The experts called for the prosecution were thoroughly cross-examined and strenuous efforts were made to minimise the effect of their testimony.

To the document examiner it was suggested that he might conceivably be wrong in his opinion that the signatures on the various questioned documents were forgeries. He agreed that though this was a possibility, he thought it very remote in view of the nature of the evidence. Certain characteristics which were common to one or two of the many genuine signatures of Sykut were pointed out by defending counsel as being also present in the questioned signatures. It was agreed that while this was so, it could not be regarded as an indication that the questioned signatures were thereby bound to be genuine, on the grounds that an unskilful writer such as Sykut who showed such considerable variation in his different signatures was bound, on occasion, to produce handwriting formations which might very well be found in one or more forgeries of his signature. To questions concerning the authorship of the questioned signatures if assumed to be forgeries, the answer was made that while there was no evidence to implicate Onufrejczyk as the writer, there were some indications which were consistent with more than one person being responsible as the forged signatures tended to fall into two groups.

The biologist was cross-examined on the significance of the extremely small amount of the blood on the walls and ceiling of the kitchen and he agreed that he found no signs of severe wounding such as arterial spurting. He also agreed as to the extreme difficulty in so thoroughly cleansing the floor of any quantity of blood that the residues would escape detection by the benzidine test—on the other hand he thought that it might very well be possible to accomplish this by thorough scouring. It was suggested that the presence of the two bone fragments in the blood spot was fortuitous and that they might have been derived from bone meal dust which adhered while the blood was still wet. There was no evidence to support or refute this suggestion, but bone meal, though used in horticulture, is rarely found on farms and apparently none had ever been used at Cefn Hendre.

The pathologist was cross-examined as to the significance of the absence of any trace of brain matter on the walls and as to the improbability of bacterial action decomposing all the blood on the floor, if a fair quantity had been spilled there only two months before the benzidine test was applied.

Giving evidence on his own behalf, Onufrejczyk stated the money he paid to Sykut was what he had left from a large sum he had smuggled into England just after the war, got from savings and a series of black market deals abroad. He accounted for his request to Mrs. Pokora to pretend to send him £450 by post, by explaining that this was to hide his true financial position from the Inland Revenue Authorities who might want to know more about the source of his money.

He denied ever making threats to Sykut and explained Sykut's absence from the farm on the morning of December 18 when two persons called to see him by saying that Sykut, feeling unwell, had gone to see a doctor in Llandilo. He could not understand why every doctor in the district had given evidence that Sykut had not sought medical advice on that day.

It was true that he had asked Mrs. Pokora to write out certain documents but they were copied from genuine originals in his possession. He denied inviting anybody from London to impersonate Sykut before a solicitor and said that there was nothing sinister in his asking Mrs. Pokora not to write again to Cwmdu, the village nearest to Cefn Hendre, stating that this request was made before the police called to make inquiries and that the police evidence to the contrary was due to their having made a mistake in the date. He dismissed as ridiculous the evidence of the Cwmdu blacksmith who had given evidence that whilst he, the blacksmith, had made a note that he had discussed horse shoeing with Sykut on December 14, Onufrejczyk had tried to persuade him that this actually happened on the 17th of that month. He repeated the story of Sykut leaving with the three strange Poles "as happy as a man going to a wedding" and swore that this was the last he saw of him.

In cross-examination Onufrejczyk was closely questioned about the disastrous state of his financial affairs as disclosed by his bank overdraft, debts and strenuous efforts to obtain loans, when he even went as far as to offer a valuer a bribe to over-value Cefn Hendre in order to obtain a further overdraft with the farm as security. He stoutly maintained his story that, through all his financial vicissitudes, he secretly retained at the farm sufficient money to pay Sykut for his share. He was, however, forced to admit that the discrepancies between his various statements to the police and the evidence that he had given on oath, showed that he had lied and lied again about the circumstances surrounding the departure of Sykut from the farm.

He affirmed that a letter received from him by a Mrs. Nowak, which according to her evidence and that of a Post Office official must have been posted before 4.45 p.m. on the afternoon of December 18, and in which he had mentioned the sale of the farm to Sykut, was actually written that night after Sykut had left with the three Poles. He explained a great number of the discrepancies in his statements to witnesses and to the police as a result of either misunderstanding or deliberate lying on the part of some if not all the witnesses.

He denied on oath being responsible for the forgeries or for the death of Sykut.

The only other witness called for the defence was a London pathologist, who gave it as his opinion that it was quite impossible for a man—judging by the picture presented by the blood stains—to have been battered to death in the kitchen of Cefn Hendre farm. He justified this opinion by remarking on the small amount of blood on the walls and what he considered was the impossibility of removing any substantial quantity of blood from the floor so completely that no trace would have been detectable by the benzidine test applied two or three months later. He described tests for residual blood in experiments he had conducted with blood stains washed off linoleum and also on the production of blood spots by flicking a bleeding finger. He considered that the pattern of the blood stains on the walls of the kitchen and passage was more consistent with its having been caused by a flicking of bleeding fingers than by the violent battering of a man to death.

Upon cross-examination he admitted that the experiments with blood on linoleum could hardly be said to reproduce the conditions on the floor of the kitchen at the farm, and also that none of the flicking experiments resulted in the production of a pattern of blood spots which exactly reproduced that found on the walls of the kitchen.

Final speeches and summing-up

Before commencing the speech for the defence, in the absence of the jury, the defending counsel asked the judge whether he thought it proper to mention to the jury that he could find no case in England's criminal history in the last three hundred years where there had been a conviction for murder without identification of a body, part of a body or clothing or an admission by the accused indicating that the victim was dead.

The judge said that his view was that counsel should make no reference to other cases in his address to the jury.

In the final address for the defence, it was urged that unless it had been definitely proved by the prosecution that Sykut was dead, there must be an acquittal. It was suggested that if Sykut were to walk into the court alive it would not prove wrong one jot of the evidence called for the prosecution and neither would it prove wrong one jot of the evidence for the defence. With respect to the visit of the three mysterious Poles who were alleged to have taken Sykut away, it was suggested to the jury that " as we live in a curious world of revolution and counter-revolution, of espionage and counter-espionage, even men in distinguished public positions disappear in the night apparently without trace."

Strong criticism was made of the importance the prosecution attached to the evidence of blood and bone in the kitchen when considered in the light of the pathological evidence given for the defence. Finally, the jury were asked if they were quite certain in their own minds that Sykut was dead and to consider if there was any evidence they could rely on that his death had been caused by the accused.

For the prosecution, the question was put as to whether they, the jury, could find any rational explanation of all the evidence that had been called before them, other than that Sykut was dead and whether the behaviour of Onufrejczyk, who had obviously lied consistently throughout, was explicable in any way other than on the assumption that he quite well knew that Sykut, being dead, would never return to expose his criminal behaviour. If they were satisfied that Onufrejczyk had been lying throughout his evidence, they had to ask themselves why and to this question it was suggested there was only one answer.

The learned judge began by quoting the judgment of the New Zealand Court of Appeal in the case of *Horry* [1952] N.Z.L.R. 111. He particularly warned the jury of the difficulty experienced by any judge in summing up a long and involved case without at times unwittingly seeming to indicate his own views on matters of fact and he instructed them to disregard any such impressions they might gain in the course of the summing-up. It was for them to judge the case and to form their own opinions on the evidence.

He said that whilst necessarily abbreviating the case for the prosecution he did not intend to leave out anything relevant to the defence. When dealing with the evidence of the pathologist called by the defence the jury were told bluntly that if they accepted his —the pathologist's—opinion that it was impossible on the evidence, for a man to have been battered to death in the kitchen then that was the end of the case, " but," the judge asked, " do you think that really is acceptable from a man who knows as little as he about the factual events ? "

After a retirement of just over two hours the all male jury returned to find the prisoner guilty.

The accused's appeal was dismissed by the Court of Criminal Appeal on January 11, 1955, see p. 188, below. The Attorney-General refused his fiat for an appeal to the House of Lords. The accused was reprieved on January 24.

Open Prisons and Borstals

By Rex Cowan, LL.B., *Solicitor*

The annual report of the Prison Commissioners always makes salutary reading for those interested in the treatment of criminals. Each year there is evidence of considerable activity on the part of the Commissioners in their search for new and more suitable penal methods, and the report for 1953 is no exception. Most important perhaps is the opening of three new open prisons, an indication of the increased development in this field.

Open Prisons

Open prisons, of which there are now ten, vary in construction from wartime hutted camps like Leyhill and Bela River Camp, to Askham Grange, a country house set in spacious grounds for women prisoners. They are all, however, similar in that there are no walls or wire surrounds to prevent escapes.

There are three categories of prisons. Local, for men serving short sentences, usually under a year; Regional training, for those with sentences of more than fifteen months, and Central for prisoners serving long sentences of imprisonment. In the two latter types, an extensive vocational and educational training programme is provided. In addition there are two camps attached to Maidstone and Wakefield closed Regional training prisons. This development shows not only a marked appreciation of the undesirability of keeping *certain* prisoners in "close security" conditions but also a courageous approach to the initial public hostility that follows in areas where new open prisons are established. For the possible dangers to the surrounding populace are not unreal. The safeguard lies in the efficiency of the method of selection of prisoners. This varies from individual selection by the Governor of the open prison, to the usual allocation by the Prison Commission. Great care is taken in this selection, and only stars (*i.e.*, usually prisoners with no previous prison sentence) or reliable ordinary prisoners (*i.e.*, those with previous prison sentences) who show no signs of a propensity towards recidivism, violence in their crime, psychopathy, or other mental disorder, are picked.

So careful has been the selection of prisoners that the number of escapes during 1952 was negligible. Such a result is more remarkable when it is realised that many of the prisoners are serving very long sentences. These prisoners are not pampered, indeed, the very lack of any restraints upon their escaping creates for many of them a far greater trial than imprisonment in a closed institution. The words of Sir Alexander Paterson, "You cannot train men for freedom in a condition of captivity," have today become almost a truism.

Any attempt to list comprehensively the advantages of open prisons would be a marathon task, far beyond the scope of this article. The fuller opportunities of training men without the constant supervision of disciplinary officers, the increased contact with the local communities outside the prison, the smaller number of prison officers needed to staff the prison, accommodation in dormitories giving better opportunities for group activities and for men to learn the important art of living harmoniously with their fellows, are just a few. But what is perhaps more easily overlooked is the feeling of increased dignity and hope that a prisoner gets once he is freed from the psychological effects of incarceration, which shows itself in a complete change of attitude towards the Governor and staff, and a greater receptivity to training.

The effect of the physical appearance of the open prisons, which are often situated in attractive countryside, on the prisoners appears to be very strong. It will probably strike lay readers as remarkable that a Governor could report on an open prison in the following terms: "Although it would be assumed that it is the freedom of an open prison which makes an immediate appeal, that has not proved to be the case and the first and lasting reaction is to the beauty of the place, both inside and out. This is not a fleeting impression, as a large number have told me before discharge in varying words that whilst their chief impression was of beauty they never realised how much it would come to mean to them and that it has given them something they will never forget."

Whilst these are still early days in the history of open prisons, and within the limits of statistical validity, it is possible to note certain *trends* in the comparative rates of reconvictions of men from closed and open prisons. It must be stressed, however, that many factors such as length of sentence, type of offence, type of offender, etc., render these statistics far from conclusive. The general picture of reconvictions of men from Regional training prisons released from 1948–1951 up to December 31, 1953, is roughly the same for open and closed prisons, although where ordinary prisoners in open prisons are concerned, the numbers discharged from open prisons up to 1950 are too small to draw any conclusions from the percentage of reconvictions.

Of star prisoners discharged from Central prisons during 1951, 2 per cent. from open prisons were reconvicted compared with 19 per cent. from closed prisons. Fifteen per cent. of ordinary prisoners released from open Regional training prisons in 1951 were reconvicted, as against 51 per cent. discharged from closed Central prisons. Here, however, the number of ordinary prisoners released from open prisons was considerably less than from closed Central prisons.

Preventive detainees

This short survey would not be complete without a mention of the small group of preventive detainees living in a hostel in the grounds of Bristol Prison. Despite the sad prognostic history of this class of offender, an attempt has been made to commence integrating men during the third and last stage of a sentence of preventive detention into ordinary life by providing almost complete freedom in the hostel and at work found for them with individual employers in Bristol city. It is too early to ascertain the scope of its success, but the Commissioners hope to extend this scheme to include other recidivist prisoners. Perhaps their comment, that " the men's reaction has been magnificent," says more than any statistics.

Borstal

Open Borstals have been functioning since 1930 when Lowdham Grange was built by the boys as a completely open institution. It was then realised that high-spirited youths could not be taught the value of freedom and trust whilst shut up and constantly supervised in closed institutions. There are now ten open Borstals for boys and for girls and only five closed.

The main problem in both kinds of Borstal is absconding, but although the figure for 1953 was about one in six of the total Borstal population, this shows a decline in the rate for the two previous years. However, the greater opportunities for absconding in open Borstals do not seem to have influenced the Commissioners in their development of these institutions as training communities. As in the open prisons, the relationship between the staff and the inmates is more friendly and co-operative. " I am not conscious of having to keep discipline, it seems to keep itself in a natural manner," writes the Governor of Huntercombe, and the Governor at Hatfield reports, " With the officer thus relieved of policing his house there is little incentive for Borstal indiscipline simply to annoy or frustrate the policeman."

A good deal of the success of the open Borstals (of all discharges from open boys' Borstals during 1952, 73·7 per cent. remained free from reconviction at the end of December, 1953) is attributable to the intricate system of classification and allocation developed at Latchmere House, and the Borstal wing at Wormwood Scrubs which attempts to send the right boy to the right Borstal for the right training with surprising accuracy.

Prevention of Juvenile Crime

By F. J. Odgers, M.A., LL.B.

The Liverpool Scheme

In 1949 the Liverpool police introduced a scheme under which a number of police officers, carefully selected for the task and known as juvenile liaison officers, were appointed to special wholetime duties concerned with the prevention of juvenile crime. A pamphlet issuing from the office of the chief constable—" Juvenile Liaison Officers, A New Police Approach to the Prevention of Juvenile Crime: 1953 "—serves to remind police and magistrates throughout the country that this scheme has now been working for more than five years. The pamphlet explains the inception and development of the scheme and provides some statistics of the work done and the results achieved, although it frankly admits that measurement of the good done by the liaison officers in terms of facts, figures and statistics is quite impossible. Indeed, the pamphlet is modest in tone. " While I do not pretend or suggest for one moment that it is a panacea for the evil of juvenile crime I do feel," writes the chief constable, " that it is a method of dealing with this great problem which is really worth while, and which is already having its effect on the juvenile crime of this city."

On some aspects of the experiment there can hardly be any doubt. A legitimate experiment having as its object the ultimate prevention of juvenile crime is always justifiable. And the selected officers have unquestionably done a lot of work and done it with enthusiasm. They set out to get the co-operation of parents, teachers, ministers, youth club leaders, and others in close contact with juveniles. They were instructed to co-operate fully with probation officers and welfare workers without trespassing on their particular field. They were to maintain regular contact with juveniles who had been cautioned by the police or referred to the liaison officers for attention. The scheme became well known within a comparatively short time and met with encouragement, particularly from schoolmasters who had been faced with cases of minor dishonesty not justifying prosecution, but for which their own disciplinary powers were inadequate.

In the period from July, 1949, to December, 1953, the officers made some 39,000 visits to homes, schools, youth clubs, churches, shops and other places of business. They addressed 464 meetings and attended 867. They introduced 862 juveniles into clubs. As would be expected, visits to homes in some parts of Liverpool were, in the early stages of the experiment, received with suspicion and antagonism but, it is said, this has been largely overcome. In the Chief Constable's Report (1954) for the year ending December 31, 1953, it is stated that only one parent refused to co-operate.

Two features of the work of the liaison officers may be stressed as being immune from any possible criticism that too wide a discretion in police officers may result in a usurpation of the functions of juvenile courts. First, the good relations established between the liaison officers and the managers of multiple stores, markets, and other places particularly susceptible to pilfering, resulted in the disclosure of offences, and the names and addresses of young offenders, which would previously have been unknown to the police. In the past managers and owners were frequently reluctant to prosecute children in minor cases, and the offenders, although detected, were allowed to go free. Now their names and addresses are taken and passed on to the liaison officers. This means that the volume of crime recorded as known to the police more nearly corresponds to that of crime committed. Up to the end of 1953, 1,116 offences have been reported to the juvenile liaison officers from outside sources—offences which might well have been unreported before the introduction of the scheme. Moreover, a conscious decision can be taken as to whether a prosecution is desirable or not, and the children are at any rate brought into contact with the police and not allowed to think that they have "got away with it." It is suggested that this has been an important factor in the decrease in such pilfering in Liverpool. Secondly, children under the age of eight years, who are immune from criminal prosecution, are seen by the officers, and their parents are consulted and advised. In 1953 the liaison officers dealt with 121 children under eight, and such interviews by experienced officers must necessarily bring home to the children and their parents that the technical immunity of a child under eight does not excuse wanton or irresponsible behaviour.

There has recently been some discussion of the advantages and disadvantages of police cautioning of young offenders, as an alternative to bringing them before juvenile courts. In favour of cautioning it has been pointed out that a considerable proportion of young offenders brought before the courts are absolutely or conditionally discharged and that cautioning without the formality of court proceedings saves time and money and trouble, and produces satisfactory results when confined to first offences of a trivial nature. Against the cautioning system it has been argued that there must inevitably be local variations in practice, that it lays the police open to suggestions of partiality or bias, that the police are not always qualified to exercise the discretion, that if there is only local recording of warnings it may be difficult to identify the "first offenders," and that in any event the national picture of juvenile delinquency may be distorted by an unrecorded increase in cautions and a decrease in juvenile court figures. In the light of these comments it is important to note that the Liverpool liaison officers "take no part in the normal procedure for dealing with juveniles caught by the police, or handed over to them, after committing offences. In these cases, their work is concerned only with such offenders who have been cautioned by a Divisional Superintendent, and it commences after that caution has been administered." It is claimed that the work of the officers, after a caution, has had considerable success, and that it is comparatively rare for the children cautioned to appear later before a juvenile court. Of 2,354 juveniles dealt with by liaison officers for offences between July, 1949, and December, 1953, 258 committed a further offence.

There has been a decrease in the number of juvenile offenders known to the police in Liverpool in 1952 and 1953, and the decrease is reflected in the reduced figures both for prosecutions and cautions: it cannot be said that the reduction in prosecutions is only a reflection of an increase in cautions, but the extent to which the overall reduction is due to the work of the liaison officers cannot, as yet, be accurately estimated. But it seems clear that Liverpool has justified its experiment, made a case for continuing it, and indicated for national consideration the possibilities of a positive and direct approach by the police to the prevention of juvenile crime.

Practice and Procedure

Information concerning previous convictions of accused and convicted persons

On January 31, 1955, the Lord Chief Justice (sitting in the Court of Criminal Appeal) stated that the judges of the Queen's Bench Division had considered the information and history of accused and convicted persons that should be given to the court, counsel and solicitors by police officers before and after conviction, and had resolved as follows:—

(1) Details of previous convictions must always be supplied by the police to the defending solicitor, or if no solicitor is instructed to defending counsel, on request. The judges are of opinion that there is no obligation on a police officer to satisfy himself that the prisoner has authorised a statement of previous convictions to be given, as it is clearly within the ordinary authority of solicitor and counsel to obtain this information. In order that the defence may be properly conducted, the prisoner's advisers must know whether they can safely put the prisoner's character in issue.

(2) There is no need for police officers to supply a list of previous convictions to the court before conviction, because the prisoner's previous convictions are always set out in the confidential calendar with which the judge is supplied by the governor of the gaol, whose duty it is to supply it. The police will, of course, give any information to the governor that he may require to enable him to perform his duty.

(3) A proof of evidence should be prepared by a police officer containing a factual statement of the previous convictions, particulars of age, education, and employment, the date of arrest, whether the prisoner has been on bail, and, if previously convicted, the date of his last discharge from prison if known. It may also contain a short and concise statement as to the prisoner's domestic and family circumstances, his general reputation and associates, and, if it is to be said that he associates with bad characters, the officer giving evidence must be able to speak of this from his own knowledge. This proof may be given either with his brief or at the outset of the case to counsel for the prosecution and to no one else, as unless the accused is convicted it has no relevance. It need not be prepared in two parts. If the accused is convicted it is to be given to the court and to counsel for the defence, but it will be for counsel for the prosecution in the first place to decide how much of this he asks the officer to prove, while it will, of course, be open to the presiding judge to put any questions he may think fit. The statement should not be handed to the court or to defending counsel until the officer is sworn. It may by leave of the court be given to the shorthand writer, who may use it to check his note, but he must only transcribe so much as is given in evidence.

Magistrates' Courts

Juvenile courts' rules of procedure

A circular letter (No. 19/1955) dated January 27, 1955, has been sent by the Home Office to the justices of juvenile courts in

England and Wales explaining the new juvenile court rules contained in S.I. 1954, No. 1711 (see [1955] Crim.L.R. 124), and making certain recommendations.

The Secretary of State invites justices of panels in areas in which the juvenile court does not sit frequently to consider the need to review the arrangements for their sittings, with a view to ensuring that juvenile offenders are dealt with promptly. If court proceedings are delayed, the memory of the occurrence that occasioned them may often have little connection in the child's mind with the steps that are being taken.

The fixing of juvenile court sittings at monthly intervals has disadvantages which may not always be apparent. For instance, a summons issued shortly before one sitting of the court is sometimes made returnable for the next, so that inquiries may be completed before the hearing; and in the result five or six weeks may elapse between the summons and the child's first appearance in court.

For the welfare of the children it is recommended that justices of juvenile courts which do not sit at least once a fortnight should make arrangements for frequent sittings when there are cases to be heard.

Section 35 of the Children and Young Persons Act, 1933, requires that the probation officer and the local authority should be notified (among other things) of the time and date of the hearing. On receipt of this notification the local authority, or where applicable the probation officer with regard to information as to home surroundings, is thereupon under a duty, except in cases of a trivial nature, to make such investigations and render available to the court such information as to the home surroundings, school record, health and character of the child or young person as appear to them to be likely to assist the court. The rules of procedure in juvenile courts (S.R. & O. 1933, No. 819) require the court, where a child or young person is found guilty of an offence, to obtain these background reports, except in trivial cases, and, if such information is not fully available, to consider the desirability of remand for such inquiry as may be necessary.

REMAND

It is essential in the proper interests of the child or young person that the court should have sufficiently full information about him before the form of treatment is decided on, and experience indicates the importance of remand wherever appropriate to enable inquiries to be completed. Valuable additional assistance may often be obtained from a report on a boy or girl from the remand home after a period of observation. The unavoidable closing of numbers of remand homes, because of the reduced demand for places in the last few years, has meant that some children when remanded in custody have to be sent to a remand home at a distance from the court. It is hoped that justices will not be deterred by considerations of distance from remanding a child or young person in custody for a report from the remand home where this course is appropriate.

Objection may be felt by courts in some instances to remanding a boy or girl because the further delay in disposing of the case might be against his or her interests. The remedy, however, seems to be not to refrain from remanding in proper cases but to arrange as may be necessary for more frequent sittings of the court. (*Note*: by virtue of sections 14 and 26 of the Magistrates' Courts Act, 1952, any single period on remand after a finding of guilt for the purpose of enabling inquiries to be made may not exceed three weeks.)

COMBINED PANELS

Orders may be made under the Children and Young Persons Act, 1933, establishing a single panel of juvenile justices for two or more petty sessional divisions of a county. Such an order does not alter the boundaries of the divisions but enables specially qualified justices, appointed at a joint meeting of the justices for the divisions concerned, to sit in a juvenile court in any part of the combined area. The Secretary of State recommends that justices should bear in mind the possibility of combined panels when considering the needs of their areas and will be glad to entertain proposals for making such orders.

Case and Comment

The reports of cases to which initials are appended hereunder have been specially prepared for *The Criminal Law Review* by the following reporters:—

HENRY PALMER, *Barrister-at-Law.*
J. D. PENNINGTON, *Barrister-at-Law.*

Accessory—*Accessory before the fact—necessity of knowledge of particular crime contemplated*

R. *v.* BULLOCK [1] (Court of Criminal Appeal: Lord Goddard C.J., Cassels and Devlin JJ.: December 6, 1954) ([1955] 1 W.L.R. 1; [1955] 1 All E.R. 15).

B. was charged jointly with Y. with breaking and entering a house in Leicestershire, and alternatively with receiving articles stolen from the house. In another count B. alone was charged with breaking and entering a house in Wiltshire. The evidence connecting B. with the two crimes rested mainly upon the fact that on each occasion a car hired by him was seen in the vicinity. B.'s defence was an alibi and the way in which the case was presented and summed up to the jury was on the basis that B. himself had been concerned with each breaking and entering. After the jury had been absent for about three-quarters of an hour they returned and asked the judge what was the law regarding a person who had knowledge of the fact that his car was being used for an unlawful purpose. The judge directed them that if B. was not the person driving the car but knew beforehand that it was going to be used for the purpose of breaking and entering, he would be an accessory before the fact. Thereupon, B. was convicted of being an accessory before the fact to the breaking and entering in each case. Relying on *R.* v. *Lomas* (1913) 9 Cr.App.R. 220, he appealed against his conviction on the ground that the judge's direction was wrong in law. It was argued that the jury should have been directed that unless B. knew that his car was being used for this particular crime and did something by way of encouragement, there was not enough to constitute being an accessory before the fact in law.

Held, distinguishing *R.* v. *Lomas,* that mere knowledge that the principal intends to commit crime does not constitute an accessory before the fact. But here, if B. had hired the car and had control of it and knew it was being used, it was plain that he must have permitted it to be used for a specific purpose. If an accused person merely suspects that if he lends something it may be used for a general criminal purpose, that may not be enough to make him an accessory before the fact. In the particular circumstances of this case, it was unnecessary to direct the jury as to whether the unlawful purpose was merely a general purpose or the intent to commit one or other of these crimes. The appeal would be dismissed. [H. P.]

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[1] For the appellant: *F. H. Lawton* (instructed by Sampson & Co.). For the Crown: *J. A. Grieves* (instructed by B. F. Chapman, Leicester).

COMMENTARY. In *R.* v. *Lomas* L. had a jemmy which belonged to K., and he handed back to K. K.'s own jemmy. L. was not in a position to withhold the jemmy or permit K. to use it. The headnote in that case reads: " Mere knowledge that the principal intends to commit crime does not constitute an accessory before the fact: there must be some particular crime in view." Devlin J., giving judgment in *R.* v. *Bullock,* pointed out that the words " there must be some particular crime in view " are not derived from anything in the judgment of that case. The case could have been decided equally well on the ground that L. had no control over the jemmy.

See Glanville Williams, *Criminal Law,* The General Part, § 58; Archbold, 33rd ed., 1500.

Accessory—*Aiding and abetting—effect of drunkenness.* See R. *v.* KEARON AND WILLIAMSON, p. 183, below.

Agent—*Commission—illegal payment*

MCINNES *v.* CLARKE [2] (Q.B., Divisional Court: Lord Goddard C.J., Cassels and Streatfeild JJ.: January 19, 1955) ([1955] 1 W.L.R. 102; [1955] 1 All E.R. 346).

M., an estate agent, carried on a business of finding furnished accommodation for persons requiring it. A person making an inquiry would be told that a fee would be payable if the person was accommodated, and that a deposit would be asked for. If the client was willing to pay the deposit an agreement was entered into between the client and M. Either before or after signing the agreement the client was given a list of addresses. After a client had obtained accommodation he would return and pay the balance of the fee due. If he was unsatisfied he would receive his deposit back in full. M. was charged with an offence under the Accommodation Agencies Act, 1953, s. 1 (1) (*b*), under which it is an offence to demand or accept money in consideration of supplying addresses of houses to let. The magistrate found that M. was carrying on an honest business, but that nevertheless was guilty on two informations and fined him 40s. on each (see [1954] Crim.L.R. 373). On appeal:—

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[2] For the appellant: *Melford Stevenson, Q.C., Roger Willis* (instructed by Willis & Willis). For the Crown: *John Phipps* (instructed by Director of Public Prosecutions).

Held, that on the facts, M. was demanding or accepting payment in consideration of supplying addressses, and the fact that he had undertaken to refund the deposit if the client did not find accommodation was immaterial. M., therefore, was properly convicted. [J. D. P.]

COMMENTARY. See Stone, 86th ed., 1436.

Armed Forces—*Offences against military property—trial by civil courts*

R. *v.* HOGAN [3] (Court of Criminal Appeal: Lord Goddard C.J., Cassels and Sellers JJ.: January 12, 1955) (*The Times,* January 13, 1955).

H. was one of six accused who pleaded Guilty at Middlesex Sessions to breaking and entering an officers' mess. Five of the accused (including H.) were serving members of the Women's Royal Army Corps. The sixth was a civilian. H. was sentenced to Borstal training and the other accused were put on probation. H. now applied for leave to appeal against her sentence.

Held, dismissing the application, that the quarter sessions, having heard all the evidence with regard to the characters, military and otherwise, of the accused, came to the conclusion that H. ought to go to Borstal, and the court could not say they were wrong. In the opinion of the court, cases in which it was alleged that serving soldiers had committed offences against Government property, at any rate where the offence was committed in a camp or barracks, should be dealt with by the Army as disciplinary offences, by court-martial or otherwise. It was most undesirable for the accused to be brought before the civil courts, for that threw the cost on the county. [H. P.]

Arrest—*False arrest by police constable.* See SHERBOURNE *v.* WALKER, p. 184, below.

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[3] For the applicant: *D. J. L. Fitzgerald* (instructed by Philip L. Ross & Co.). The Crown was not represented.

Assault—*Charge of assault with intent to evade arrest—conviction of common assault*

R. *v*. WILSON[4] (Court of Criminal Appeal: Lord Goddard C.J., Cassels and Sellers JJ.: January 12, 1955).

W. was charged at Nottinghamshire Quarter Sessions with an assault on a gamekeeper with intent to evade arrest. Under section 31 of the Game Act, 1831, a gamekeeper is entitled to arrest a person he finds in pursuit of coneys, but he must first ask for his full name and address. The gamekeeper in evidence said that he had only asked for W.'s name. The deputy chairman thereupon ruled that W. could not be charged with the offence of assault with intent to resist lawful apprehension, because the apprehension was not lawful, but told the jury they could convict of a common assault if they were satisfied that W. used more force than was necessary to avoid unlawful apprehension. The jury thereupon convicted W. of common assault. W. appealed against his conviction. It was submitted that, although W. could have been convicted of common assault had he been charged with that offence, he could not, on a charge of assault with intent to evade arrest, be found guilty of a common assault.

Held, dismissing the appeal, that the offence of assault with intent to evade arrest is simply one form of aggravated assault. Where a man is charged with an offence he may be found guilty of a lesser offence of the same quality. Here, the necessary intent was not proved and W. was perfectly properly convicted of common assault, which was the offence charged without aggravation. [H. P.]

COMMENTARY. See Archbold, 33rd ed., 201; Stone, 86th ed., 1012.

Assault—*False imprisonment by police constable.* See SHERBOURNE *v*. WALKER, p. 184, below.

Betting—*Agent acting for owner of betting house—prosecution*

BAXTER *v*. KELDON[5] (Q.B. Divisional Court: Lord Goddard C.J., Cassels and Streatfeild JJ.: January 18, 1955) ([1955] 1 W.L.R. 84; [1955] 1 All E.R. 361).

B. carried on a betting business at premises in Kennington Road, S.E.11. Money and betting slips were accepted on B.'s behalf by his agents at a number of " pitches " in the streets, brought to the office and there sorted and recorded. On certain dates in October, 1953, the defendant was seen at one of the pitches receiving from men money and betting slips on B.'s behalf, which he delivered to B. at his office. The defendant was charged under section 3 of the Betting Act, 1853, with assisting in conducting the business. The justices dismissed the information. The prosecutor appealed.

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[4] For the appellant: *Peter Bruce* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *A. Ellis* (instructed by Hibbert & Son, Mansfield).

[5] For the prosecutor: *H. F. Cassel, E. J. P. Cussen* (instructed by Solicitor, Metropolitan Police). For the defendant: *Mervyn Griffith-Jones* (instructed by Henry I. Sydney & Co.).

Held, dismissing the appeal, that since section 4 of the Act made it an offence for any person to act for and on behalf of the owner of a betting house and the defendant having been found to be doing this, he should have been charged under this section and not under section 3 which carried the heavier penalty.

Per Lord Goddard C.J. Where an Act creates a substantive offence upon a person doing a certain thing, and the evidence shows that a defendant did that very thing, it seems to me that by all the canons of construction he must be prosecuted for that offence, and the prosecution must not, by inference, try to get him made liable to a more severe penalty by saying that, in so doing that thing he in some way aided and abetted—because that is what the argument comes to—the commission of an offence under the previous section.

This case is a striking instance of the curiously unsatisfactory state the betting laws are in, and no blame attaches to the police for having brought this prosecution under section 3. [J. D. P.]

COMMENTARY. See Stone, 86th ed., 1029–1033.

Drunkenness — *Accessory — aiding and abetting — knowledge of offence*

R. *v.* KEARON AND WILLIAMSON[6] (Liverpool City Quarter Sessions: E. Steel, Esq., Assistant Recorder: January 3, 1955).

K. was charged with driving a motor-vehicle while under the influence of drink to such an extent as to be incapable of having proper control of it. W., the owner of the car which K. had been driving, was with him at the time of the alleged offence and was charged with aiding and abetting K. The police surgeon examined W. one hour and twenty minutes after the car had been stopped and found him to be extremely drunk.

Held, that there was no case against W. as he was too drunk at the time of the offence to possess the necessary knowledge to aid and abet.

[Reported by Donald M. Foster, *Barrister-at-Law*.]

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[6] For the prosecution: *R. S. Trotter* (instructed by the Town Clerk, Liverpool). For the defendant Kearon: *Glyn Burrell* (instructed by Ernest B. Kendall & Rigby, Liverpool). For the defendant Williamson: *Melville Kennan* (instructed by North, Kirk & Co., Liverpool).

COMMENTARY. See Glanville Williams, *Criminal Law,* The General Part, Chapter 10; Archbold, 33rd ed., 20.

Evidence—*Admissibility—evidence illegally obtained*

KURUMA *v.* R.[7] (Judicial Committee of the Privy Council: Lords Goddard C.J. and Oaksey and Mr. L. M. D. de Silva: January 11, 1955) ([1955] 2 W.L.R. 223 ; [1955] 1 All E.R. 236).

K. was charged with being in unlawful possession of ammunition contrary to the Kenya Emergency Regulations, 1952. The regulations provided that any police officer of or above the rank of assistant inspector might stop and search any individual if he suspected that any evidence of the commission of an offence might be found on that individual. Evidence was given that K. was stopped and searched by two police constables, neither of whom was of or above the rank of assistant inspector, and two rounds of ammunition were found on him. The two rounds were produced in evidence. K. was convicted. He appealed on the ground that the evidence proving that he was in possession of the ammunition was illegally obtained.

Held, dismissing the appeal, that the test to be applied in considering whether evidence was admissible was whether it was relevant to the matters at issue. If it was, it was admissible and a court was not concerned with how the evidence was obtained. There was no difference in principle for this purpose between a civil and criminal case, although in a criminal case the judge always had a discretion to disallow evidence if the strict rules of admissibility would operate unfairly against the accused. This did not qualify the rule as to the admission of confessions which was that a confession could only be admitted if it was voluntary, and one obtained by threats or promises held out by a person in authority was not to be admitted. Accordingly, the evidence in the present case was properly admitted. [J. D. P.]

COMMENTARY. An article on this case will be published in a future issue.

False Imprisonment—*Arrest by policeman—charge of obstruction.*

SHERBOURNE *v.* WALKER[8] (Queen's Bench Division: Sellers J.: February 15, 1955) (*The Times,* February 16, 1955).

The plaintiff was on a feed cab rank where taxicabs could assemble in line to feed a one-taxi rank. A private car had drawn up in such a position as to make it difficult for the taxis to draw away, and the taxi-drivers had congregated together towards the front of the rank. The defendant, a police constable, came up with a colleague and ordered the taxi-drivers back to their cabs. The plaintiff returned to his cab and resented being told to sit in it. The defendant then asked the plaintiff for his driving licence (the defendant denied having done so) and the plaintiff produced the licence. The defendant looked at the licence and asked truculently if the right name and address was given. The plaintiff said of course it was or else it would not have been there. Thereupon the defendant said: "I think I will arrest you" and he did. The plaintiff said immediately: "I definitely think I have been wrongly arrested and I will complain to the Commissioner." In an action for assault, false imprisonment and malicious prosecution:—

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[7] For the appellant: *Dudley Collard* (instructed by Gaster & Turner). For the Crown: *D. A. Grant* (instructed by Charles Russell & Co.).

[8] For the plaintiff: *Sebag Shaw* (instructed by Philip Conway, Thomas & Co.). For the defendant: *W. Stabb* (instructed by the Solicitor, Metropolitan Police).

Held, the defendant was not acting from a proper motive; it would appear that his attitude was affected by what had happened about the driving licence and that he was piqued so that he allowed the matter to overcome his judgment. All three causes of action had been established; £100 damages was awarded for assault and wrongful imprisonment and £50 for malicious prosecution. [J. D. P.]

Food and Drugs—*Slaughterhouses—premises suitable for use as—proximity of dwelling-houses*

W. RICHARDS (ASTON) *v.* SUTTON COLDFIELD BOROUGH COUNCIL[9] (Warwickshire Quarter Sessions: the Hon. Sir Donald Finnemore, Chairman: January 3, 1955).

The appellants were the occupiers of premises which they had been authorised by a licence without limitation of time to use as a slaughterhouse up to 1940, when private slaughtering ceased by order of the Minister of Food. Since the erection of the slaughterhouse and since its use as such had commenced, a private dwelling-house had been built very close to it. On the reintroduction of private slaughtering in 1954 the appellants applied to the local authority for renewal of their licence under section 57 (2) of the Food and Drugs Act, 1938. The local authority refused the application on the sole ground that the premises were in too close proximity to the nearest inhabited premises and were therefore "not suitable for use for the purpose in question" within proviso (*b*) to section 57 (2). The appellants appealed to quarter sessions contending that the ground of refusal stated was not a valid ground for refusal to grant or renew a licence.

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[9] For the appellants: *Douglas Draycott, R. John Toyn* (instructed by Ryland, Martineau & Co., Birmingham). For the respondents: *James Ross* (instructed by Town Clerk, Sutton Coldfield).

Held, allowing the appeal, that the Food and Drugs Act, 1938, was designed to ensure that people had food and drugs properly prepared for consumption and that slaughterhouses were hygienic places where meat was properly dressed. In deciding whether the premises were "suitable for use" within the meaning of the proviso the Appeals Committee could not consider the question of amenities or the possibility of nuisance arising.

[Reported by R. J. Toyn, *Barrister-at-Law*.]

COMMENTARY. Section 57 (2) of the Food and Drugs Act, 1938, provides that "A local authority on receiving from the occupier of . . . any premises an application for the grant or renewal of a licence authorising him to keep those premises as a slaughterhouse . . . may grant or renew to him a licence in respect of those premises: Provided that the authority—. . . (*b*) shall not refuse to grant or renew a licence in respect of premises which immediately before the commencement of this Act . . . were premises in respect of which a licence without limitation of time authorising their use as a slaughterhouse . . . was in operation . . . and . . . were then in use as such, unless they are satisfied . . . that the premises named in the application are not suitable for use for the purpose in question."

See Stone, 86th ed., 917.

Husband and Wife—*Larceny by husband of wife's property—indictment.* See R. *v.* GURMIN, below.

Indictment—*Duplicity of count.* See R. *v.* MICHALSKI, p. 192, below.

Indictment—*Larceny by husband of wife's property—prosecution by person other than wife*

R. *v.* GURMIN [10] (Nottinghamshire Quarter Sessions: T. R. Fitzwalter Butler, Esq., Chairman: January 4, 1955).

The defendant was arraigned on an indictment containing two counts, the first charging him with breaking and entering the dwelling-house of one Grace Gurmin, the defendant's wife, with intent to steal and with stealing certain of her property, and the second with receiving the same property. It appeared from the depositions that at one time the defendant and his wife had lived together in the house, but at the time of the alleged offences the wife was living there apart from her husband and she had been paying the rent for some time.

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[10] For the prosecution: *George Terrell* (instructed by Marchant & Co., Mansfield). For the defence: *C. H. G. Leaf* (under the Poor Prisoners' Defence Act, 1930).

Before the prisoner was called on to plead, the chairman drew attention to the recent decision of *R.* v. *Moore* [1954] Crim.L.R. 376. After hearing argument the chairman said that he had at one time felt some doubt whether the present indictment would lie since the wife was not the prosecutor. This point had been raised by counsel for the defendant in *R.* v. *Moore*, but as the judge had decided in that case that the wife was in fact the prosecutor, the question whether anyone other than the wife may prosecute for larceny by the husband of the wife's property remained undecided. However, he was of the opinion that the prosecution was a remedy or redress by way of criminal proceedings for the protection and security of the wife's separate property within the meaning of section 12 of the Married Women's Property Act, 1882, and therefore the indictment would lie. He directed, however, that it should be amended by adding to the relevant section of the Larceny Act, 1916, in each count " as applied by section 12 of the Married Women's Property Act, 1882."

The prisoner pleaded guilty to housebreaking and larceny and was bound over for two years. He was ordered to pay £10 costs and £5 15s. compensation to his wife.

[Reported by T. R. Fitzwalter Butler, *Barrister-at-Law*.]

COMMENTARY. The Married Women's Property Act, 1882, s. 12, provides: " Every woman . . . shall have in her own name against all persons whomsoever, including her husband . . . the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property as if such property belonged to her as a feme sole. . . ."

Intoxicating Liquor—*Licensed premises—entry by police—obstruction.* See HINCHCLIFFE *v.* SHELDON, p. 189, below.

Murder—*Defence—self-defence*

CHAN KAU *v.* R.[11] (Judicial Committee of the Privy Council:

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[11] For the appellant: *Dingle Foot, Q.C., Ingram Poole* (instructed by Hy. S. L. Polak & Co.). For the Crown: *D. A. Grant* (instructed by Charles Russell & Co.).

Lords Oaksey and Tucker and Mr. L. M. D. de Silva: January 11, 1955) ([1955] 2 W.L.R. 192; [1955] 1 All E.R. 266).

K., who was charged with murder, alleged in his defence that he unwittingly became involved in a fight between two rival gangs; being attacked by a member of one gang, he picked up a knife with which he struck his assailant in self-defence or, alternatively, under such provocation as would reduce the crime to manslaughter. The trial judge, in his summing up directed the jury that before K. could avail himself of the defence of self-defence he must satisfy the jury that the defence was necessary. The judge withdrew the issue of provocation from the jury directing them that the only possible verdicts were Guilty of murder or Not Guilty. The jury convicted K. of murder. On appeal:—

Held, that in cases where the evidence disclosed a possible defence of self-defence the onus remains on the prosecution to establish that the accused was guilty of murder and the onus is never upon him to establish this defence any more than it is for him to establish provocation or any other defence apart from that of insanity. The statement in *R.* v. *Smith* (1837) 8 C. & P. 160, 162, referred to in Archbold, 33rd ed., at p. 942, that "before a person can avail himself of that defence (*i.e.*, self-defence) he must satisfy the jury that that defence was necessary," needs some modification in the light of modern decisions. On the facts, the jury's rejection of the defence of self-defence did not amount to a miscarriage of justice; but the evidence established that there was a case with regard to provocation fit to be left to the jury and, accordingly, the verdict of Guilty of murder could not stand.

[J. D. P.]

COMMENTARY. See Archbold, 33rd ed., 934, 941.

Murder—*Proof of corpus delicti by circumstantial evidence*

R. *v.* ONUFREJCZYK [12] (Court of Criminal Appeal: Lord Goddard C.J., Cassels and Sellers JJ.: January 11, 1955) ([1955] 2 W.L.R. 273; [1955] 1 All E.R. 247).

O. was convicted at Swansea Assizes of the murder of his partner S. There was no trace at all of the body of S. nor any direct evidence of his death or proof of how he died, but there was very strong evidence, in particular O.'s course of conduct, that if S. were dead he had been murdered by O. O. appealed against his conviction on the ground that, *inter alia*, there was no proof of *corpus delicti*.

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[12] For the appellant: *Elwyn Jones, Q.C., Jenkin Jones* (instructed by D. S. Glasbrook, Llandilo). For the Crown: *H. Edmund Davies, Q.C., W. L. Mars-Jones, Esyr Lewis* (instructed by Director of Public Prosecutions).

Held, dismissing the appeal, that the fact of death like any other fact, can be proved by circumstantial evidence, but the jury must be warned that the evidence must lead to one conclusion only. There was evidence on which the jury could infer that S. was dead; and if he was dead, the circumstances of the case pointed to the fact that his death was not a natural one. That established a *corpus delicti*, and the evidence was such that the jury were entitled to find that O. murdered S. [H. P.]

COMMENTARY. See the article on p. 158. A further article on the legal aspect of the case will be published in a future issue.

Police—*False imprisonment*. See SHERBOURNE *v*. WALKER, p. 184, above.

Police—*Obstruction—detaining police from entering licensed premises*

HINCHCLIFFE *v*. SHELDON[13] (Q.B. Divisional Court: Lord Goddard C.J., Cassels and Streatfeild JJ.: January 20, 1955).

The son of the licensee of a fully licensed hotel was charged with obstructing a constable in the execution of his duty contrary to section 2 of the Prevention of Crimes Amendment Act, 1885. He returned to his home one night at 11.17 p.m. The lights were still on in the bar of the hotel and two cars were waiting outside. He knocked on the front door of the premises and said "It's me, Mum; it's all right." Then he saw a policeman standing near the front door whereupon he knocked again and said "The police are outside." He then ran round to the rear of the premises, where he saw another constable to whom he said "You'll not catch them because I've told them you are here." In the meantime the other constable had knocked at the front door of the premises. The defendant came round to the front door again and shouted "Make sure you are clear before you open the door. The place is surrounded by police." The licensee did not open the door until 11.25 p.m. some eight minutes after the constable had knocked.

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[13] The appellant appeared in person. For the police: *F. P. Neill* (instructed by R. C. Linney, Wakefield).

The police, on entering the premises, found the licensee and his wife and one resident standing in the bar, but there were no intoxicating liquors or glasses in sight though the counter was wet. In a room beside the bar were a number of people including the licensee's daughter, but they were not drinking intoxicating liquor. No breach of the Licensing Act, 1953, was proved against the licensee. The defendant contended that there was no reason why a son should not warn his parents of the presence of the police and that, in any event, a warning could not be an obstruction. The West Riding justices convicted him and he appealed to the Divisional Court.

Held, dismissing the appeal, that the police were entitled under section 151 of the Licensing Act, 1953, to enter licensed premises at any time for the purpose of preventing or detecting an offence under the Act and if they were detained from going into premises that obstructed them in the execution of their duty because it gave the licensee an opportunity to remove any traces if an offence was being committed. It was clear in the present case that the police wanted to enter the premises and obviously the defendant was obstructing them and the justices were right in convicting him.

[Reported by Mrs. E. M. Wellwood, *Barrister-at-Law*.]

COMMENTARY. In his judgment Lord Goddard C.J. distinguished the present case from *Bastable* v. *Little* [1907] 1 K.B. 59 and *Betts* v. *Stevens* [1910] 1 K.B. 1. In both those cases police were on duty watching a measured stretch of road and timing the speed of motor-cars driven along it with a view to the prosecution under the Motor Car Acts, 1896 and 1903, of drivers exceeding the speed limit; the defendants in each case warned approaching drivers of the police trap and were charged with obstructing the police in the execution of their duty within the meaning of section 2 of the Prevention of Crimes Amendment Act, 1885. In the first case the defendant was found not guilty. In the second case the defendant was found guilty, but in that case there was evidence that the cars were going at an unlawful speed at the time of the warning. In both cases Lord Alverstone C.J. expressed the view that physical obstruction or threats were not the only kind of acts which would amount to obstruction within the meaning of section 2 of the Act of 1885.

Lord Goddard distinguished the cases on the ground that there is no comparable section in the Road Traffic Acts (which have replaced the Motor Car Acts), to section 151 of the Licensing Act, 1953.

See Archbold, 33rd ed., 1041; Stone, 86th ed., 485, 1243.

Quarter Sessions—*Committal for sentence to—change of plea*

R. *v.* SAVAGE AND TORCH [14] (Poole Borough Quarter Sessions: Malcolm McGougan, Esq., Recorder: January 12 and 13, 1955).

On November 8, 1954, S. and T. were jointly charged with larceny before Poole Magistrates' Court. They consented to summary trial, pleaded guilty, and were committed to quarter sessions for sentence under section 29 of the Magistrates' Courts Act, 1952. On November 29, T. in a letter to the Poole police intimated that he wished to change his plea, and was thereupon granted legal aid. At quarter sessions, he then contended (a) that the recorder had a discretion to allow him to change his plea; alternatively (b) that the recorder had power to remit the case to the justices to determine as a question of fact whether the defendant should be allowed to change his plea. The recorder held that quarter sessions had no discretion to allow a change of plea, but had power to remit the case to the justices for their determination upon a prima facie case being made out. Having examined T. on oath, the recorder thereupon remitted the case to the justices accordingly. Before the Poole Magistrates' Court the next day, the prosecution took the preliminary point that the justices had no jurisdiction, citing as their authority *R.* v. *Campbell, ex p. Hoy* [1953] 1 Q.B. 585.

Held by the justices, that they had jurisdiction, but that on the facts there was no reason, having regard to the principles set out in *R.* v. *McNally* [1954] Crim.L.R. 631, why a change of plea should be allowed. T. was therefore re-committed for sentence to quarter sessions sitting the same day and was there sentenced to two years' corrective training.

[Reported by Paul Sieghart, *Barrister-at-Law*.]

COMMENTARY. It was held in *R.* v. *Grant* [1951] 1 K.B. 500 that where an offender is committed to quarter sessions for sentence, " he is to be treated in all respects as though he had been committed for trial to quarter sessions and will be in the same position as if he had pleaded guilty before them." The recorder apparently held that this consideration alone did not confer upon him the normal discretion of a trial judge with respect to change of plea. In *R.* v. *Durham Quarter Sessions, ex p. Virgo* [1952] 2 Q.B. 1, quarter sessions had remitted a case to the justices with a direction to enter a plea of not guilty, but in that case quarter sessions became seized of the matter by way of appeal, and not by reason of a committal for sentence. The procedure adopted here, therefore, would seem to be entirely novel and appears difficult to explain on the authorities.

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[14] For the prosecution: *Paul Sieghart* (instructed by C. P. Brutton, Dorset County Prosecuting Solicitor). For the defendant Torch: *C. Ingram Poole* (instructed by J. W. Miller & Son, Poole). For the defendant Savage: *B. R. O. Carter* (instructed by W. Kenyon, Clerk of the Peace, Poole).

Rape—*Sentence.* See R. *v.* CUNNINGHAM, p. 193, below.

Receiving—*Indictment—successive receiving by different persons of same goods*

R. *v.* MICHALSKI[15] (Court of Criminal Appeal: Lord Goddard C.J., Cassels, Lynskey, Byrne and Ashworth JJ.: December 20, 1954, January 31, 1955) (*The Times*, February 1, 1955).

M. was charged together with X. in one count of the indictment with receiving stolen property. The evidence led by the prosecution at the trial disclosed two several receivings, *i.e.*, the goods were first in the possession of M. and subsequently came into the possession of X. At the close of the case for the prosecution, counsel on behalf of both prisoners applied to quash the indictment on the ground that, since the evidence disclosed receivings by the prisoners severally, the count alleging a joint receiving was bad. The chairman of quarter sessions thereupon struck the name of X. out of the count, and so left it against M. only. M. appealed against his conviction.

Held, that this procedure was irregular. Once the prisoner was in charge of the jury, he could only be delivered by verdict. The chairman had directed the jury to return a verdict acquitting X. but by that time his name had been struck out of the count. The count was not bad for duplicity since only one offence was charged. It was unfortunate that the provisions of section 44 (5) of the Larceny Act, 1916, had not been brought to the attention of the chairman. Although the amendment striking out the name of X. was irregular, it in no way affected or prejudiced M. so there was no ground for interfering with the conviction. [H. P.]

COMMENTARY. Section 44 (5) of the Larceny Act, 1916, provides that if, at the trial of any two or more persons indicted for jointly receiving any property, it is proved that one or more of such persons separately received any part of such property, the jury may convict upon such indictment such of the persons as are proved to have received any part of such property. In *R.* v. *Reardon and Bloor* (1866) L.R. 1 C.C.R. 31 (decided upon the similar wording of section 14 of the Administration of Criminal Justice Act, 1851), it was held that the section applied where two persons separately received the whole of the property.

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[15] For the appellant: *Eric Myers* (instructed by Messrs. Oswald, Harrison & Smith). For the Crown: *Sir H. Hylton-Foster, Q.C., S.-G., Christmas Humphreys, Robert Hughes* (instructed by Director of Public Prosecutions).

Road Traffic—*Driving under the influence of drink—aiding and abetting.* See R. *v.* KEARON AND WILLIAMSON, p. 183, above.

Sentence—*Corrective training—age of prisoner wrongly stated*

R. *v.* ROSSI [16] (Court of Criminal Appeal: Cassels, Streatfeild and Slade JJ.: January 24, 1955) ([1955] 1 All E.R. 368n.).

R. was convicted of shopbreaking at Middlesex Sessions and sentenced to three years' corrective training. He had been twice previously convicted of offences punishable on indictment with imprisonment for a term of two years or more. The date of the first conviction was December 20, 1939, and of the second, April 3, 1943. At the trial R.'s age was stated to be thirty-one, which meant that he would have been under seventeen years of age at the date of the first conviction. R. appealed against his sentence.

Held, that the evidence before the trial court was that R. was under seventeen years of age at the date of the first qualifying conviction, although the court was now informed that, owing to a mistake by the learned prosecuting counsel, R.'s age was given as thirty-one instead of thirty-two. Bearing in mind that R. had kept himself free of trouble for twelve years, that he had certain responsibilities and that the offence may have been attributable to a certain amount of drink taken and keeping bad companions, the court would reduce the sentence to one of eighteen months' imprisonment.

In any case where the age of the prisoner is of importance for the consideration of the court, the police or prison report should state his date of birth. [H. P.]

Sentence—*Rape—reasons for increasing sentence to life imprisonment*

R. *v.* CUNNINGHAM [17] (Court of Criminal Appeal: Lord Goddard C.J., Cassels and Sellers JJ.: January 12, 1955) (*The Times*, January 13, 1955).

The defendant was convicted at Chester Assizes of three separate rapes, one on a woman of seventy-two years. In each case his method had been to go to the house in the daytime, knock on the door and when the woman opened the door, to push in and proceed to rape her. He had many previous convictions for dishonesty, but none for an offence of this character. The trial judge sentenced the defendant to eighteen years' imprisonment on each count, to run concurrently, and he appealed against this sentence.

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[16] For the appellant: *J. Yahuda* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *H. F. Cassel* (instructed by the Solicitor, Metropolitan Police).

[17] The appellant appeared in person. The Crown was not represented.

Held, the sentence should be increased to one of life imprisonment. The Home Secretary has power under the Criminal Justice Act, 1948, at any time to review a sentence of life imprisonment. The defendant would not necessarily be kept in prison as long as the sentence originally passed upon him: he might be kept longer. It would enable him to be kept until the Home Secretary was satisfied that, if the defendant were allowed to go out into the world again, women would be safe from him. [H. P.]

Sentence—*Supervision order—sentence of imprisonment—imprisonment in default of payment of fine*

R. *v.* DRISCOLL [18] (Court of Criminal Appeal: Lord Goddard C.J., Cassels and Sellers JJ.: January 12, 1955).

D. applied for leave to appeal against a supervision order. He had been twice previously convicted and was, in respect of one of the convictions, fined £310 19s. 0d. with an alternative of three months' imprisonment in default of payment. His wife had paid £122 and D. had spent some time in prison in respect of the £188 19s. 0d. unpaid balance. It was contended that this was not a "sentence of imprisonment" within the meaning of section 22 (1) of the Criminal Justice Act, 1948.

Held, dismissing the application, that a sentence of a fine and in default of payment a period of imprisonment, where some time was actually served in prison, could be regarded as being a "sentence of imprisonment." Thus the necessary essentials to the making of a supervision order had been complied with and there was no ground for interfering with the order made. [H. P.]

COMMENTARY. The Criminal Justice Act, 1948, s. 22 (1), provides that a supervision order may be made where a person "has been convicted on at least two previous occasions of offences for which he was sentenced to Borstal training or imprisonment."

See Archbold, 33rd ed., 1528.

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[18] The applicant did not appear and was not represented. The Crown was not represented.

Acts and Orders

Agriculture

See Importation of Plants Order; Wart Disease of Potatoes (Protected Area) (General Licence) Order, p. 196, below.

Animals

Live Poultry (Restrictions) (Amendment) Order, 1954 (S.I. No. 1745): operative January 17, 1955. The Order of 1954 (S.I. No. 121; see [1954] Crim.L.R. 311) is amended. The principal changes are: (1) geese over the age of nine days are now included as store poultry; (2) poultry intended for immediate slaughter may not be moved to an authorised market or sale unless their tail feathers are clipped in the prescribed manner; (3) the prohibition against moving poultry, day-old chicks or hatching eggs into the Isles of Scilly from any other part of Great Britain is removed; (4) the scheduled area into which poultry may not be moved from any other part of Great Britain is altered.

For powers of the police under these regulations, see the Diseases of Animals Act, 1950, s. 71, and for penalties for contraventions, see sections 78–80.

Poultry Carcases (Landing) Order, 1955 (S.I. No. 147): operative March 1, 1955. Previous Orders of 1950 and 1951 prohibiting the landing in Great Britain of poultry carcases that are not fully cooked are consolidated.

Customs and Excise

Export of Goods (Control) (Amendment No. 3) Order, 1955 (S.I. No. 50): operative January 17, 1955. The principal Order (S.I. No. 118; see [1954] Crim.L.R. 312) has been further amended.

London

The following Orders have been made prohibiting waiting in certain streets: S.I. 1955, Nos. 78 (Dorking); 91 (Watford).

The following Orders have been made detailing prescribed routes: S.I. 1955, Nos. 57, 132 (Westminster); 131 (Hackney); 133 (Woolwich).

The following Order has been made restricting the weight of vehicles driven on certain roads: S.I. 1955, No. 106 (Surbiton).

Pest Control

IMPORTATION OF PLANTS ORDER, 1955 (S.I. No. 81): operative April 1, 1955. The Importation of Plants Orders, 1947 to 1954, the Importation of Plants (General Licence) Orders, 1953 to 1954, and the Importation of Raw Cherries Order, 1954, are consolidated with certain amendments. The importation is prohibited of potatoes for planting, potatoes for any purpose from the American Continent or Australia, annual and biennial plants from places outside Europe, all species of the genera fragaria or rubus from North America, all species of the genus prunus from places outside Europe and all species of the genus rosa from Australia, Italy or New Zealand; potatoes includes any part of the potato plant (r. 5). The importation of plants, potatoes, lettuce and tomato seed, and pea seed for sowing, raw cherries, apples, lettuce and raw vegetables is restricted (r. 7). Consignments of plants, potatoes and, subject to certain exceptions, of those imports whose landing is restricted by rule 7 must be accompanied by a health certificate in the prescribed form (r. 6, Scheds. 1, 2). In addition to his other powers on the landing of produce in contravention of the Order, an authorised officer of the Ministry of Agriculture and Fisheries may without examining the produce issue a licence for it to be removed (r. 8). Such an officer may also examine and take samples of any plants which have been landed during the previous twelve months, or which have been derived from plants or seeds landed in that period (r. 9). If an importer fails to carry out any measure of disinfection or treatment of an unhealthy consignment prescribed by notice, an authorised person may enter any premises in which such a consignment is kept, and carry out such measures, or destroy or export the produce (r. 10).

The penalty for wilfully obstructing an authorised officer in the exercise of his powers, and for any contravention, other than landing or attempting to land produce, of the Order or of a licence granted under the Order is a fine not exceeding £10 for a first offence, and £50 for any subsequent offence. For penalties for landing or attempting to land produce in contravention of the Order, see section 1 of the Destructive Insects Act, 1877.

WART DISEASE OF POTATOES (PROTECTED AREA) (GENERAL LICENCE) ORDER, 1955 (S.I. No. 105): operative January 28, 1955. Seed potatoes obtained from crops grown in a protected area, which crops were not certified under the scheme for the inspection of growing crops of potatoes authorised by the Ministry of Agriculture and Fisheries but were grown from seed potatoes of certain specified varieties, may be planted or sold for planting within that area. They may not be planted in land on which wart disease has occurred unless they are of an approved immune variety.

Scotland

Firearms and offensive weapons

FIREARMS (SCOTLAND) RULES, 1955 (S.I. No. 75): operative February 1, 1955. New forms are prescribed for applications for the grant of and for the renewal or variation of firearm certificates.

Sea Fisheries

SOUTHERN SEA FISHERIES DISTRICT (EXTENSION OF DISTRICT) ORDER, 1955 (S.I. No. 77): operative January 14, 1955. The district is extended to include the Fleet from Portland to the eastern boundary of the parish of Abbotsbury.

Letters to the Editor

Advocacy at Petty Sessions—Written Statements of Charges

Sir,

The practice of the police in the areas of Hampshire and West Sussex in which I practice does not accord with that prevailing in the Windermere district as stated by Police Inspector S. W. Wills in his letter which appears in the February issue of *The Criminal Law Review*.

The " Bail Certificates " which are produced to me by my clients certainly do not contain " a written statement of the charge or charges, equally comparable to a Summons. . . ."

The certificates usually contain the single word " larceny " or " malicious damage," or as the case may be.

I hasten to add that the Police Officers with whom I have to deal are always ready and willing when asked to supply full information concerning the charges.

Yours faithfully,
DAVID H. ROEBUCK,
Solicitor.

Petersfield, Hants.

Advocacy at Petty Sessions—Witnesses and Young Persons

Sir,

I should like to draw your attention to Mr. Harrison's article in the February issue of *The Criminal Law Review*. On p. 90 under (c) he says: "normally the defence takes no part while evidence is being given for this purpose because it has to be given again if the magistrates agree to try the information summarily." This is quite wrong. Section 23 of the Magistrates' Courts Act, 1952, makes it unnecessary to recall the witnesses, but rule 21 of the Magistrates' Courts Rules, 1952, requires their recall, if necessary, for cross-examination.

On p. 91 Mr. Harrison says that a young person who has attained the age of sixteen, charged with an indictable offence other than homicide, must be told of the provisions of section 28. There is no authority whatever for that statement. The only provisions requiring that a defendant be told he might be committed to Quarter Sessions for sentence are in section 19 (4) and in section 25 (5), both of which refer to section 29, and that section applies only when the defendant is not less than seventeen years old.

Section 29 does not apply to young persons at all, a young person being a person who has attained the age of fourteen, but who has not attained the age of seventeen. Under section 28 a person not less than sixteen, but under twenty-one, may be committed to Quarter Sessions with a view to a Borstal sentence, but the court is never required to tell a young person between the age of sixteen and seventeen that he may be committed to Sessions for Borstal before asking him whether he consents to be dealt with summarily under section 20.

Yours faithfully,
J. H. Craine,
Chief Clerk.

Bow Street, London.

Books and Periodicals

Reviews:

The Slaughter of Animals Handbook. By Basil James, Barrister-at-Law. London: Hadden, Best & Co. 1954. xxvii and 94 and (index) 9 pp. (7s. net.)

This little handbook contains a short summary of the statutory provisions dealing with slaughterhouses, knackers' yards, the licensing of slaughtermen, the slaughter of animals and meat inspection, and then provides a print of the relevant sections of the Food and Drugs Act, 1938, the Slaughter of Animals Acts (including that of 1954) and the Slaughterhouses Act, 1954; the Public Health (Meat) Regulations of 1924 are included as also are a few circulars of the Ministry of Food and the much more important "Memo. 3/Meat" on meat inspection.

No doubt it will be convenient for sanitary and veterinary inspectors to have all their law on the subject under one cover, but we doubt whether the book will serve a very useful purpose for anyone else. The statutes are only very lightly annotated, and the introductory summary though accurate is very sketchy. The book was published too soon to include the extremely important Slaughter of Animals (Prevention of Cruelty) (No. 2) Regulations, 1954 ([1955] Crim.L.R. 46), and much of the text will be obsolete when the consolidating Food and Drugs Act that we have been promised (see Ministry of Food Circular 22/54) comes into force to say nothing of the Food Hygiene Regulations expected at the same time.

J. F. G.

International Review of Criminal Policy. Nos. 1, 2, 3, 4. United Nations Publication, New York. London: H.M.S.O. 1952, 1953.

The United Nations has become a factor to be reckoned with in the production of literature relating to crime and criminology. This new periodical contains contributions describing criminal and penal policy in all parts of the world—Britain is well represented. Easily the most important of the numbers reviewed is No. 3, which contains the communications and report of the Brussels Seminar on the Medico-Psychological and Social Examination of Offenders. This matter is of central importance in the effort to individualise the treatment of offenders, because it is not possible for the judge to make an informed choice of the measure suitable to the individual unless all the available facts relating to his personality are available, so that some estimate may be formed of the conscious or subconscious motives of his actions and the chances of rehabilitation. For instance, it is necessary to know this in order to decide whether probation will have a chance of success, and if so what conditions to put into the order. An adequate investigation must concern itself not only with the accused's state of mind but with his home conditions, his family, companionships, group attitudes, and relation with his work. In short, the line of progress indicated by the Brussels Seminar is the extension to adult offenders of the type of inquiry already established for juveniles. To some extent connected with this is that great question of penal politics, the choice between the determinate and the indeterminate sentence. At the Seminar the British official representatives again made clear their adherence to the determinate system, but the report seems to indicate that this was a minority view.

The Bibliography, covering both books and periodicals in all languages, is an immensely valuable feature of the new Review.

GLANVILLE WILLIAMS.

Archbold's Criminal Pleading, Evidence and Practice. Fourth Cumulative Supplement and Noter-up to the thirty-third edition. By T. R. Fitzwalter Butler and Marston Garsia, Barristers-at-Law. London: Sweet & Maxwell, Ltd. (Supplement, 10s. 6d. a year; Noter-up service, 7s. 6d. a year extra.)

This Supplement and Noter-up bring the book up to date to January 1, 1955.

Books Received:

Break Down the Walls. By J. Bartlow Martin. London: Victor Gollancz, Ltd. 1955. 273 and (bibliography) 5 and (index) 8 pp. (15s. net.)

Crime Detection. Modern Methods of Criminal Investigation. By A. Svensson and O. Wendel. London: Cleaver-Hume Press, Ltd. 1955. xvi and 350 and (bibliography) 6 and (index) 20 pp. (38s. 6d. net.)

Brothers in Law. By Henry Cecil. London: Michael Joseph, Ltd. 1955. 222 pp. (10s. 6d. net.)

United in Crime. By H. Montgomery Hyde. London: William Heinemann, Ltd. 1955. xxx and 191 pp. (no index). (15s. net.)

The Spirit of Liberty. Papers and Addresses of Judge Learned Hand. London: Hamish Hamilton, Ltd. 1954. xxx and 285 pp. (no index). (21s. net.)

Articles:

Law Quarterly Review, Vol. 71.
  Venire de novo, p. 100.

Juridical Review, Vol. 66.
  Fair play for the criminal, p. 199.

International Criminal Police Review, January, 1955.
  Triple verification of the age of a questioned document, p. 17.

The Magistrate, Vol. 11.
  The problem of punishment, p. 7.
  Adjournment and remand, p. 10.

Solicitors' Journal, Vol. 99.
  The Road Traffic Bill, p. 54.

Law Journal, Vol. 105.
  Dangerous and careless driving, p. 52.

Justice of the Peace, Vol. 119.
  " Customs " Acts and " Excise " Acts, p. 51.
  Admissibility of similar facts: the test of relevancy, p. 82.

Police Review, Vol. 63.
  Organisation and method (in a police force), pp. 38, 58, 74.
  The police council, p. 40.
  Death and the coroner's officer, p. 42.
  Meditation on murder, p. 76.
  Offences in connection with driving, p. 80.

Police Chronicle.
  The age of consent, January 14, 1955, p. 3.
  Conversations between prisoners in adjoining cells overheard by police, January 21, 1955, p. 9.
  Sunday entertainments, January 28, 1955, p. 4.
  More about statements, February 4, 1955, p. 9.

THE CRIMINAL LAW REVIEW

Editors
JOHN BURKE and PETER ALLSOP, M.A.
Barristers-at-Law

Editorial

Capital punishment

In the debate in the House of Commons [1] on the report of the Royal Commission on Capital Punishment, the Government gave their provisional views on three of the most important recommendations of the Commission. The Government decided " provisionally " first that the minimum age for the imposition of the death sentence is not to be raised from eighteen to twenty-one; secondly, that discretion should not be vested in the jury to decide whether imprisonment for life should be substituted for the death sentence; and thirdly, that the test of criminal responsibility laid down in England by the McNaghten Rules should remain as it is. There was little in the debate to lead anyone to suppose that these provisional views of the Government would not become final.

A number of minor recommendations of the Commission which do not require legislation have been accepted in principle, and effect is being given to them where possible. Thus, where any question of difficulty with regard to the mental state of the accused is likely to arise, steps are taken to consult a psychiatrist from outside the prison service.

Unfortunately for those who would have liked to have seen a constructive debate on the report of the Royal Commission, attention was focused on an amendment, put down by members on both sides of the House, proposing a suspension of the death sentence for a period of five years. The abolitionists, as in fact they were, had the best of the argument but the worst of the vote.

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[1] H.C. Debates, Vol. 536, col. 2070; February 10, 1955.

However, although the Whips were off, the division lists showed that a swing of the political pendulum might well give the abolitionists the vote as well.

Police prosecution and the Press

In a recent case before Havers J. at Liverpool Assizes, it appeared that a police officer prosecuting in the magistrates' court had allowed his brief or confidential papers to be disclosed to a journalist. Commenting on this, his Lordship said: " I can quite understand a journalist wanting to have an accurate report of the proceedings which had taken place. And no doubt he would be quite entitled to try to verify from the police officer concerned what was said by the officer. But it is a wholly different matter to ask that he should be allowed to see confidential papers, and this is most undesirable."

Plain English

A correspondent, a clerk to justices, recently received the following letter : " Dear Sir, I am sending you £2 1s. 9d. for a fine regarding a motor bike about an Excise Licence and want to know what an Excise Licence means as I am paying this fine without my husband knowing, and want you to tell me in plain English what it means so I will know who is at fault before I beat him up."

Report on the police

The report of H.M. Inspectors of Constabulary for the year ending September 30, 1954, gives encouraging news on the volume of crime: indictable crime dropped by 7.9 per cent. in the year reviewed. Although this report overlaps the White Paper (Cmd. 9199, [1954] Crim.L.R. 738) on criminal statistics for 1953, it appears that the reduction commenced in 1952 and continued in 1953 was further continued in 1954.

The report is not encouraging on the subject of recruiting, and records " the inability of many police forces to obtain sufficient numbers of fit men as recruits."

U.N. Congress on crime prevention

The first United Nations Congress on the prevention of crime and the treatment of offenders will be held in the Palais des Nations, Geneva, from August 22 to September 3, 1955. The British Government will be officially represented. The Congress will consider the standard minimum rules for the treatment of prisoners, selection and training of personnel, open institutions, prison labour and juvenile delinquency.

Individuals with a direct interest in the subjects of the Congress who wish to attend at their own expense should apply to the Director, Division of Social Welfare, United Nations, New York, U.S.A., stating their profession, relevant organisations of which they are members, some indication of the items on the agenda they will be most likely to follow, and the working language with which they are most familiar. The working languages of the Congress will be English, French and Spanish.

Parliament

Road traffic

During February the House of Lords spent a number of days discussing the Road Traffic Bill and many amendments were proposed and considered (H.L. Debates, Vol. 191, cols. 8, 137, 177, 303, 495, 593 ; February 15–17, 22, 28, March 1). In the Commons the Minister of Transport answered a number of questions concerning road traffic. He is not yet in a position to make any decision about regulations allowing car owners to leave their vehicles without lights in the street if within a hundred yards of public lighting. The Minister is not prepared to make it compulsory to fix rubber flaps on the rear mudguards of road vehicles, as he considers the present requirement of wings or other similar fittings to catch mud or water thrown up by the wheels sufficient. The Road Research Laboratory is making an investigation into the use of various types of flashing indicators and the Minister will review the present position when he receives the Laboratory's report (H.C. Debates, Vol. 537, cols. 356–58 ; February 16, 1955).

Preventive detention

It is difficult at present to judge the effect of preventive detention as a deterrent to crime or in the rehabilitation of criminals. By December 31, 1954, 211 men and 10 women had been released from sentences of preventive detention passed under the Criminal Justice Act, 1948, and of these 97 men and 1 woman had been reconvicted of further offences. No considered assessment of the value of the sentence can, however, be made on such a limited basis. About 1,200 habitual criminals are imprisoned under such sentences (Vol. 537, col. 1447 ; February 24, 1955).

London hooliganism

The Metropolitan police have been giving particular attention to offences such as assaults, malicious damage or insulting words or behaviour which may be classed as hooliganism. The number of arrests for such offences has increased, but the Commissioner considers this is because of the action of the police rather than because of any appreciable increase in rowdyism (Vol. 537, 1442; February 24, 1955).

Police

During 1954, 4,790 men joined police forces in England and Wales. 2,321 police left before qualifying for an ordinary retirement pension. On January 31, 1955, the police forces were 8,832 men short of the authorised male establishment of 72,844. This shortage is a difficult problem, particularly in London, but it may be noted that the number of men joining was higher than the average yearly number of 3,000 before the war. Certain proposals relating to the terms of duty and other matters concerning the police are now being considered by the Police Council (Vol. 537, col. 1440 ; February 24, 1955).

Intoxicating liquor

There is an anomaly in the law which allows young persons under eighteen years of age to buy alcoholic drinks in dance halls granted an occasional licence. The Government has no immediate intention of amending the law in this respect. Such licences may only be granted with the consent of the justices, who thus exercise a measure of control (Vol. 537, col. 75; February 17, 1955).

Probation Officers Conference

The National Association of Probation Officers is to hold its forty-third national conference at Torre Abbey, Torquay, from Friday, April 22 to Monday, April 25.

Judicial appointment

Mr. Norman Harper has been appointed Recorder of Doncaster.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Review. They should be sent to the EDITOR, *Criminal Law Review*, 3 CHANCERY LANE, LONDON, *W.C.2. Every effort will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Murder Without a Body—The Legal Aspects

By J. Ll. J. Edwards

Reader-in-Law at The Queen's University, Belfast

Potential murderers have long laboured under the blithe but dangerous assumption that there can be no conviction for murder unless the body of the victim is available for inspection and identification. Throughout the centuries, and particularly in several recent cases, murderers have gone to extraordinary lengths to eliminate all possible chances of identification. Acid-baths, cremation, lime-pits, dismembering, and disposal into the depths of the sea—all these various methods have been resorted to at one time or another, but it is a very rare occurrence for a murderer to succeed in completely destroying the damning evidence of his handiwork. Hence the unusual interest taken in the case of *R.* v. *Onufrejczyk* [1955] 2 W.L.R. 273, in which absolutely no trace of the victim was discovered despite intensive search by the police. Nevertheless, the jury convicted the accused of murder, and the Court of Criminal Appeal upheld the ruling of the trial judge that the fact of death may be proved by circumstantial evidence, notwithstanding that neither the body nor any trace of it has been found.

Different Meanings Given to Corpus Delicti

It is, of course, a well-established proposition of law that there can be no conviction for a crime without evidence to establish the *corpus delicti.* Because of its dramatic application in cases of homicide, where it is usually associated with the body of the victim, it is often mistakenly thought that proof of the *corpus delicti* is a requirement peculiar to murder and manslaughter. But it is equally appropriate to refer to the stolen goods in larceny, the burnt building in arson, and a wounding in a charge of causing grievous bodily harm, as the *corpus delicti* of the respective crimes. In each of these instances what is referred to is the occurrence of the particular harm prohibited by the criminal law. This is the most restrictive meaning given to the phrase *corpus delicti*, and in stressing the necessity for proving the commission of such an event the law is simply issuing an advance but salutary warning: " don't attribute guilt to a person without first establishing that a crime has been committed."

There is another wider definition which extends the *corpus delicti* to include not only the occurrence of the forbidden harm but also the criminal conduct which has brought it about. Relating this definition to the crime of murder, proof of the *corpus delicti* means that two conditions must be satisfactorily established. First, that the victim alleged to have been murdered is in fact dead and, secondly, that his death was caused by the conduct of another person in such circumstances as to exclude the possibility of death by accident or suicide and so as to amount to murder. Some judges have given an even wider interpretation and include a third condition, namely, that the accused committed the murder. It need only be pointed out that such an extensive definition has the result of making the term *corpus delicti* synonymous with the whole of the charge, and this interpretation is not generally adopted by the courts or by textbook writers. In this article it is proposed to limit the phrase *corpus delicti* to (1) the fact of death, and (2) somebody's criminal responsibility for the death of the victim. Both elements must be established and both were clearly in issue in *R.* v. *Onufrejczyk*.

Possible Methods of Proving the Corpus Delicti in Murder

There appear to be three possible circumstances whereby the *corpus delicti*, as defined above, may be proved in a case of murder. I propose to treat of them separately.

(1) *Where only fragments of the victim's body are found*

Many are the remarkable instances of identification which have been achieved from apparently insignificant portions of the human torso. The skill of the pathologist and the scientific investigator has often defeated the best laid plans of a murderer to dispose of his victim. Thus, in the notorious *Crippen* case in 1910, tried before Lord Alverstone C.J., the body of the victim, the accused's wife, had been dismembered. No head, no bones, and no organs that would indicate sex were discovered, but only some fragments of flesh, upon one of which was found a scar identical in nature and position with one proved to have been on Mrs. Crippen's body as the result of an operation. In more recent times, the case of *R.* v. *Haigh* (1950) 18 Medico-Legal Journal, Pt. 2, 38, instances the unsuccessful attempt of a multiple murderer to dispose completely of his victims in an acid-bath. Across in the United States, the most celebrated case is *Commonwealth* v. *Webster* (1850) 5 Cushing 295, in which the accused, a professor of chemistry at

Harvard University, was charged with the murder of a colleague. A great number of fragments of human bones and certain blocks of mineral teeth, embedded in slag and cinders, were found in a furnace in the professor's laboratory but none of these remains was identifiable. However, there was found intact in the furnace a set of artificial teeth which had been made for the victim a few years earlier, and which had been actually refitted by the same dentist a fortnight before his disappearance. In each of these three cases, the violence with which the deceased met his death was readily inferred, and with strong circumstantial evidence connecting the accused with the killing, convictions for murder were recorded.

Some features similar to *R.* v. *Onufrejczyk* are discerned in the Irish case of *The People* (*Att.-Gen.*) v. *Kirwan* [1943] Ir.R. 279, in which the law relating to *corpus delicti* was thoroughly examined by the Supreme Court of Eire. The accused and his brother resided together on a remote farm. An appointment made by the brother was not kept, and his disappearance was unaccounted for until a limbless trunk of a human body was found buried in a bog a few miles from where the two brothers lived. The medical evidence identifying the torso as the remains of the dead brother was inconclusive, but there was other circumstantial evidence—that the accused, before the torso was found, had been heard inquiring whether the police had searched the bog; that the accused had dissecting experience with animals; that the torso was wrapped in a binder twine bag corresponding in every respect to three bags known to have been kept in the farm up to the date when the brother disappeared, and that one such bag was now missing.

Maguire J. warned the jury that they must be satisfied that the torso was part of the body of the missing brother, and added that unless the circumstantial evidence "led to one rational conclusion only it was of no value." The learned judge further directed the jury that they were "entitled to arrive at a conclusion as a result of moral certainty beyond reasonable doubt." A similar direction to the jury, given in *R.* v. *Horry* [1952] N.Z.L.R. 111 and relied upon by Oliver J. in *R.* v. *Onufrejczyk*, was the subject of certain observations by the English Court of Criminal Appeal in relation to the requisite standard of proof. It will be necessary later to consider these views, but suffice it now to acknowledge the original source of this statement of the law of evidence to Wills' *Circumstantial Evidence*, 5th ed., Chap. 7, s. 3, in which it is stated "that the fact of death may be legally inferred from such strong and unequivocal circumstances of presumption as render it morally certain, and leave no ground for reasonable doubt."

Direct and circumstantial evidence

Maguire J.'s direction was upheld by the Eire Supreme Court. Referring to the argument that direct evidence alone and not circumstantial evidence must identify the discovered remains with the person alleged to have been murdered, Murnaghan J. in the Supreme Court said: " No authority was cited for this proposition, which seems a strange one, because persons accustomed to recognising a man in his lifetime might have little chance of recognising a human body in a state of decomposition, and more so when the body has been dismembered. . . . If the matter is to be determined by the rule that the best evidence must be produced, it seems to me clear that circumstantial evidence is much more reliable than any attempt at identification by people who knew [the deceased] when living." There can be little room for quarrelling with this opinion, since it is well known that in cases like *Crippen, Haigh* and *Webster* identification of the victim could only be ascertained by scientific methods. Expert evidence by pathologists and other forensic scientists is not by reason of that fact alone conclusive; but it must be recognised now that, as circumstantial evidence, it can point unequivocally to the conclusion that death was brought about by violent measures, and that the remains are those of the person alleged to have been murdered. In other words, the *corpus delicti* in this first category is invariably established by circumstantial evidence, and such evidence has frequently been accepted as sufficient proof.

(2) *Where no part of the victim's body is found and there is no confession by the accused*

Clearly the most satisfactory way of establishing that a person is dead is to find his body. Not only will it confirm the fact of death, but it may present cogent evidence that the deceased met his end by violence at the hands of another. No wonder then that the strongest emphasis is placed on discovering and identifying the body of the person murdered. But that is far from elevating into a principle of law the view that the production of the victim's body is an indispensable condition of liability for murder. Yet that is precisely the meaning which was given by some judges, until recent times, to a celebrated passage in Hale's *Pleas of the Crown*, Vol. 2, p. 290. There Sir Mathew Hale writes: " I would never convict any person of murder or manslaughter unless the fact were proved to be done or at least the body found dead." It will be observed at once that the conditions referred to by Hale are disjunctive, and merely state that in order to convict a person of murder there must be proof *either* of the fact of murder *or* of the finding of the dead body. As Lord Goddard C.J. was at pains to point out in *R.* v. *Onufrejczyk* [1955] 2 W.L.R. at p. 277, Hale's words do not support the absolute proposition that in no case can there be a conviction for murder unless the body of the victim is produced or accounted for.

Attitude adopted in the U.S.A.

On the other hand, echoes of Hale's statement, construed in its most rigid form, are to be found in several of the state penal codes in America. For example, Article 1204 of the Texas Penal Code provides: " No person shall be convicted of any grade of homicide unless the body of the deceased, or portions of it, are found and sufficiently identified to establish the fact of the death of the person charged to have been killed." North Dakota, Colorado, and New York are other states which diverge from the more general view that the *corpus delicti* can be established by circumstantial evidence —see *People* v. *Hanson* (1935) 359 Ill. 266, and *Williams* v. *People* (1945) 114 Colo. 207. And as recently as 1887 in *R.* v. *Sullivan*, 16 Cox C.C. 347, 354, that distinguished judge, Palles C.B., expressed the opinion that Hale's dictum laid down a proposition which has been acted upon ever since—" that in no such case ought a confession to be acted upon, without evidence of the *corpus delicti,* by proof of the act done, or of the body being found dead." This view has not received much support on this side of the Atlantic, though it must be confessed that there is a paucity of English authorities to which reference can be made. Palles C.B.'s opinion was expressly disapproved by the Irish Court of Crown Cases Reserved in *R.* v. *McNicholl* [1917] 2 Ir.R. 557, 584, when Sir James Campbell C.J. declared that " the adoption of such a proposition as an inflexible principle of our criminal law, would be fraught with incalculable peril to the safety and lives of His Majesty's subjects." Referring to Hale's dictum, the learned Chief Justice said that " what has been relied upon as an inflexible legal maxim is nothing more or less than a wise and necessary caution to be addressed by the presiding judge to the jury before they convict."

Consequences of convicting without any trace of a body

It was along the same lines that Lord Goddard spoke in the recent case of *R.* v. *Onufrejczyk*, but it is surprising to read his statement " that there is apparently no reported case in English law where a man has been convicted of murder when there has been no trace of the body at all "—[1955] 2 W.L.R. at p. 275. Such cases are indeed extremely rare, but reference can be made to several instances in which lamentable consequences have resulted from convicting the accused of murder without being able to trace the body of the victim. The earliest example is *R.* v. *Perry* (1660) 14 St.Tr. 1312, in which the accused confessed that he, together with his mother and brother, had murdered H. and hidden the body. All three were hanged. Two years later H. returned to the neighbourhood, where he was supposed to have been murdered, with a story about his having been kidnapped and sold as a slave to Turkish pirates from whom he ultimately escaped. Then, Hale in his *Pleas of the Crown*, Vol. 2, 291, reports the *Staffordshire Case* sometime in the seventeenth century, in which A was missing for a long period. Upon strong presumptions B was believed to have murdered A, and to have consumed him to ashes in an oven. B was indicted for murder, convicted and executed. A year later A returned having been sent beyond the seas by B, against his will. Hale's comment is that " though B justly deserved death, yet he was really not guilty of that offence for which he suffered." A third example is the *Warwickshire Case* in 1610, reported by Coke, 3 Co.Inst., c. 104, p. 232, in which an uncle, charged with the murder of his niece who had disappeared, produced another child to impersonate the niece. The fraud was discovered and the accused was convicted and executed. In fact, what had happened was that the niece had run away after being punished by the uncle and had been adopted by another family. Again in an American case, *Boorn* (1819) 5 Law Reporter 193 the murderer was about to be hanged, when the person supposed to have been killed was discovered alive, but in this case parts of the victim's body were believed to have been found.

Murder on the high seas

Long ago, an eminent American judge, Story J., realised the implications of applying Hale's dictum in all its strictness. Such a rule, the learned judge pointed out in *U.S.* v. *Gibert* (1834) 2 Sumn. 19, 27, would amount to a universal condonation of all murders committed on the high seas. There are, in fact, several cases in which convictions for murder at sea have been sustained notwithstanding the fact that the dead body could not be produced. The case of *James Camb*, (1949) *Notable British Trials*, is probably still fresh in the reader's mind, and it followed an earlier instance, *R.* v. *Armstrong* (1875) 13 Cox C.C. 184, in which a man had been thrown overboard in a Gold Coast river, rife with sharks, and his body was never seen again. In these cases, and in *R.* v. *Hindmarsh* (1792) 2 Leach 569, it is, of course, possible to maintain that the convictions for murder were reached on the basis of direct or circumstantial evidence pointing unequivocally to the deceased having been killed *before* being thrown overboard. And, as we have seen, even Hale accepted as sufficient proof of the *corpus delicti* the fact that homicide was proved to have been committed.

Similarity of pattern in ONUFREJCZYK *and* HORRY

Turning now to *R.* v. *Onufrejczyk*, the significant feature of this case, so far as the law is concerned, lies not so much in the complete failure to discover the body, as in the absence of any evidence to show how the victim met his death. The facts in that case were fully elaborated in the March issue of this *Review*, and I do not propose to repeat them. But it may be thought pertinent to examine the equally extraordinary story unfolded in the New Zealand case, *R.* v. *Horry* [1952] N.Z.L.R. 111. As in the case of *Onufrejczyk* there was no trace of the victim's body or even portions of the body, there was no confession, and no evidence of any violence having been used to the person supposedly dead. Yet the accused was convicted of murder, and that conviction was upheld by the Court of Appeal of New Zealand.

Horry and his bride, Eileen, were married in Auckland. Previously, Eileen had withdrawn about £1,000, her total assets, to take with her on the honeymoon. After spending the night at an hotel in a nearby beach resort, the following morning the couple visited a friend to whom they disclosed the fact that they were leaving New Zealand that day. Eileen was never seen again, alive or dead. The next day Horry was back in Auckland and there he opened a bank account, depositing £766. It was established that, from that day until his arrest, Horry never once left the shores of New Zealand. A month after the wedding, Eileen's parents received a letter purporting to have been posted in Sydney, Australia, saying that the couple were leaving for England. Shortly afterwards, Horry called upon Eileen's parents and told them the story of how, when Eileen and he were travelling from America to England on the *Empress of India*, the ship was attacked by U-boats and that Eileen had been put in one of the lifeboats but never seen again. In fact there was no such ship as the *Empress of India*. When arrested Horry could give no satisfactory explanation of his possession of several parts of Eileen's trousseau, and entangled himself in a mesh of lies. Despite the complete absence of any evidence as to how Eileen met her death the Court of Appeal upheld the conviction. " Once his story," said Gresson J., delivering the judgment of the court, " is rejected as incredible, the appellant is left in a network of facts not explainable upon any other hypothesis than that he murdered Eileen, and therefore sufficient in their cumulative effect to establish guilt."

Rather a similar pattern can be seen in *R.* v. *Onufrejczyk.* The accused's dire need of money; his contradictory accounts, to the people from whom he was trying to borrow money, as to the whereabouts of his partner Sykut the victim of the alleged murder; the accused's proposal that a friend should go with him to see a solicitor and impersonate Sykut; the deliberate attempt to get the local blacksmith to change the date when he said he had last seen Sykut. In both *Horry* and *Onufrejczyk* the circumstantial evidence was compelling. In each case the accused, by his actions, letters and statements, wove for himself an inculpatory net which, even without a confession, was considered sufficient to discharge the burden of proof which rests upon the prosecution of proving the *corpus delicti.*

(3) *Where no body is found, but the accused makes a confession*

Judicial opinion is far from being unanimous on the question whether a confession by the accused, without other external circumstantial evidence, is sufficient proof of the *corpus delicti.* Supposing there is no evidence at all of the fact of death—supposing there is no trace of the body or any portions of it—is the trial judge, nevertheless, entitled to direct the jury that a confession can be accepted as a substitute form of proof? Reference has already been made to the opinion of Palles C.B. in *R.* v. *Sullivan* (1887) 16 Cox C.C. 347, in which the Chief Baron said that " in no case of murder or manslaughter ought a confession to be acted upon without evidence of the *corpus delicti*, by proof of the act done or of the body being found dead." No confession was made by either of the accused in *Horry* or *Onufrejczyk*, so that this particular question did not arise. And in those cases in which a confession has been relied upon it is important to remember that the accused's confession did not stand alone, but was supported by concurrent, incriminating circumstances. In such cases the confession must be regarded as forming only a part, withal a vital part, in the circumstantial evidence which established the *corpus delicti.*

The most recent English decision is *R.* v. *Davidson* (1934) 25 Cr.App.R. 21, in which a father was charged with the murder of his son, whose body was never found. The accused had confessed on three separate occasions to having drowned the boy—first, in a letter to the police, then in a letter to his wife, and again in a formal statement to the police. At the trial he retracted each of these confessions, but was convicted of murder. It was pointed out by the Court of Criminal Appeal that the fact of the boy's death did not rest upon the unsworn confessions, or any of them, made by the appellant. He had, in fact, given sworn testimony during the trial that his son was dead and that he had tried to resuscitate him by artificial respiration. The boy's death having been established, said Lord Hewart C.J., it was perfectly open to the jury to disbelieve the retractions of his confessions which the accused had made, and to accept his earlier statements that he was the cause of the boy's death.

Necessity for corroboration of a confession

There are two Irish cases in which the same problem arose. In *R.* v. *McNicholl* [1917] 2 Ir.R. 557, the father of an illegitimate baby was charged with its murder. For some time before its disappearance the accused had been trying, by telling a number of falsehoods, to get possession of the child which was being cared for by its mother. Eventually, the mother handed over the baby to the accused, who said that he had brought transport to take the baby to Mrs. X who was willing to adopt it. There was, in fact, no transport and no Mrs. X. Later on, in answer to questions by the child's mother as to its whereabouts, the accused confessed to having killed it by suffocation within a few minutes after he had obtained possession of it. He also said that he had buried the body in his own mother's grave, but when this was opened no child's body was found. The Irish Court of Crown Cases Reserved held that the case had rightly been left to the jury, because in addition to the accused's confession there was also evidence *aliunde* which, even though insufficient in itself to prove that murder was done, corroborated the truth of the confession. Taken together this evidence was sufficient to prove the *corpus delicti*.

The same attitude was adopted in another case of child-murder, *Att.-Gen.* v. *Edwards* [1935] Ir.R. 500, in which, again, no body was found at the spot pointed out to the police by the accused as the place of burial. Where there is ample corroborative evidence of the statements made in a confession, the danger of convicting the accused without positive proof of the *corpus delicti* is minimised. What may happen when there is little circumstantial evidence to support a confession may be seen in an Australian case, *R.* v. *McDermott* (1948) 76 C.L.R. 501. A man named Lavers had disappeared and his body was never discovered—the only possible evidence of his death were two small bloodstains. After being arrested, and interrogated by the police, McDermott confessed to having killed Lavers, but denied this confession at the trial. He was convicted of murder, but released five years later after a Royal

Commission had reported that it was clear that McDermott had nothing to do with Lavers' death, always supposing that Lavers was dead.

What then is the correct position ? It is submitted that Palles C.B. goes too far in saying that the *corpus delicti* must always be proved by evidence which is independent of a confession by the accused. On the other hand, it is suggested that it would be equally dangerous to accept an unsupported confession as sufficient to establish the *corpus delicti*. It is, of course, not necessary to require evidence from other independent witnesses. For example, antecedent threats made by the accused, the finding upon him, when arrested, of articles proved to have been in the possession of the missing person when last seen alive, the discovery of blood stains, or of a weapon known to belong to the accused—this is the kind of corroborative evidence which, together with a confession, should be left to a jury to decide whether the person, whose body is not found, was in fact murdered and whether the accused was the murderer.

Standard of Proof in Establishing the Corpus Delicti in Murder

The precise standard of proof to be attained by the prosecution when establishing the fact of death in a case of murder was discussed by the Court of Criminal Appeal in *R.* v. *Onufrejczyk*. It arose out of the adoption by Oliver J., the trial judge, of the direction laid down by the New Zealand Court of Appeal in *R.* v. *Horry*. In that case the law was said to require the fact of death to be proved " by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for." Dr. Norval Morris, commenting (68 L.Q.R. 394) on this direction in *R.* v. *Horry*, considers that it sets up a different standard of proof for the fact of death from that normally required in criminal cases. It lies, according to Dr. Morris, somewhere between the burden of proving guilt beyond all reasonable doubt, as in all criminal cases, and proof positive of guilt, which is never available in human affairs. To accept such a doctrine which appropriates different standards of proof to various elements of a crime is, to my mind, both unsatisfactory and undesirable. It would certainly add to the difficulties of the jury.

It is, therefore, in one sense, encouraging to note that Lord Goddard C.J. in *R.* v. *Onufrejczyk* absorbed the standard of proof of the fact of death into the general standard required when proving the crime charged and the accused's guilt in respect of that crime. The Lord Chief Justice, it is respectfully suggested, is on less sure ground when disapproving of the phrase "morally certain" in *R.* v. *Horry*, for which he would substitute "such circumstances as render the commission of the crime certain." According to Lord Goddard, when dealing with evidence, it is undesirable to use epithets in order to increase or decrease its value. In his opinion, phrases like "a high degree of certainty" add nothing to what the law requires. But is the word "certain" itself unambiguous? Do the phrases "a high degree of certainty," "moral certainty," "absolute certainty," and "a moderate degree of certainty" all convey the same meaning to the ordinary person? "The ordinary person" is stressed because it must be remembered that in criminal cases the jury is the tribunal of fact. It is they who must apply the law, and they who must decide whether the evidence for the Crown fulfils the required standard of proof.

Not for the first time in recent years—see *R.* v. *Kritz* [1950] 1 K.B. 82 and *R.* v. *Summers* (1952) 36 Cr.App.R. 14—Lord Goddard discarded the "reasonable doubt" formula which has long been associated with the criminal standard of proof. The Lord Chief Justice prefers the jury to be directed that they must not convict unless they are satisfied on the evidence that the crime is proved and that the prisoner is guilty of the crime. In the opinion of the present writer, the ambiguity which attaches to the word "certain" is also true of the word "satisfied." It may be asked: is the standard of proof associated with "being satisfied" an absolute one in the sense that the jury must be satisfied beyond a shadow of doubt, or does it merely mean satisfied beyond a reasonable doubt? The law may be clear on this point, but will the ordinary juryman understand the test he is to apply without some elaboration from the judge as to the proper standard of proof?

Putting Character in Issue

Under section 1 (*f*) of the Criminal Evidence Act, 1898, a person charged with an offence and called as a witness in proceedings relating to that offence must not be asked, and if he is asked is not bound to answer, any question tending to show that he has committed, or has been convicted or charged with, any offence other than the one with which he is then charged, or is of bad character unless:—

"(i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or

(ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or

(iii) he has given evidence against any other person charged with the same offence."

The second exception—where the accused loses his immunity either by putting his own character in issue or by attacking the character of the prosecutor or his witnesses—is one which frequently gives rise to argument. The law on this point was clarified in the case of *Stirland* v. *Director of Public Prosecutions* [1944] A.C. 315. In that case the House of Lords laid down certain rules which should govern the cross-examination of a defendant giving evidence as to his character and credit. It was held in that case, *inter alia*, that:—

(i) an accused may be examined as to any evidence that he has given in chief, including statements as to good character with a view to testing its veracity and his credit;

(ii) an accused who puts his character in issue puts the whole of his past record in issue;

(iii) an accused is not deprived of the protection of section 1 (*f*) of the Criminal Evidence Act, 1898, where the proper conduct of the defence necessitates the making of injurious reflections on the prosecutor or his witnesses;

(iv) mere suspicion or accusation of crime is no disproof of good character and evidence thereof is inadmissible—questions such as "Were you suspected?" or "Were you accused?" are irrelevant to the issue of character.

It was also held in this case that if one part of a defendant's character is put in issue, then the whole of his past record can be the subject of inquiry. Thus, a defendant cannot restrict evidence of his character to certain aspects of it only. If he gives evidence in chief, for instance, of his business repute or his sexual morality, then he is liable to be asked in cross-examination about any previous convictions, say, for dishonesty. A defendant who gives evidence in chief that he is a reputable shopkeeper, or a regular church-goer, may be said, in effect, to be holding himself up as a model—an honest and upright—citizen and thus trying to establish his own good character. If he does this he is, therefore, open to be questioned about the whole of his past history—so far as such questioning tends to disprove or rebut the impression that he has tried to create.

It was said in the case of *Stirland* v. *Director of Public Prosecutions* that "A prisoner cannot assert his good character in certain respects without exposing himself to inquiry as to the rest of his record so far as this tends to disprove his claims to good character." The point of such cross-examination is, of course, to test the veracity or accuracy of claims to good character, or with a view to showing that the defendant is not entitled to be believed on oath.

In a recent case at the County of London Sessions, the defendant was charged with being under the influence of drink or drugs when in charge of a motor-car, on a road, to such an extent as to be incapable of having proper control over it. He said in reply to his counsel in evidence in chief that he had held a driving licence for a number of years, had driven extensively, and during that time had had no motoring convictions recorded against him. When counsel for the prosecution rose to cross-examine, in the absence of the jury, he asked the leave of the court to question the defendant as to a previous conviction for dishonesty some years before. To this contention the defence objected, submitting that the defendant had in no way put his character in issue as his driving record was a question purely of physical ability rather than one of character.

In reply, the prosecution argued that a man's driving record formed part of his general character and make-up, and that, as the evidence of the defendant's good driving record tended to create an impression of soundness and reliability, he could be fairly said to have put part, at any rate, of his character in issue. Relying on the case of *Stirland* v. *Director of Public Prosecutions*, the prosecution argued that, having put part of his character in issue, the defendant had lost his immunity and was liable to be questioned as to the whole of his past record.

The learned deputy chairman held that the defendant had in fact put part of his character in issue and that evidence of past bad character was admissible in these circumstances.

J. C.

Obscene Publications: Society of Authors' Draft Bill

By J. P. Eddy, Q.C.

In view of the considerable number of prosecutions and other proceedings in respect of obscene or alleged obscene publications, it is not surprising that the Society of Authors should be concerned to bring about an amendment of the existing law on the subject. The Committee—originally presided over by Sir Alan Herbert and subsequently by Sir Gerald Barry—which was appointed on the initiative of the Society, has submitted its recommendations to the Home Secretary, and these take the form of a Draft Bill—the Obscene Publications Bill. This Bill was introduced as a Private Member's Bill in the House of Commons on March 15, 1955.

The Present Law

The law relating to obscenity was fully discussed in a critical article by Mr. Norman St. John-Stevas last November, [1954] Crim.L.R. 817. But it will be convenient to examine this Draft Bill against the background of a few of the decided cases, bearing in mind that in this country there are two forms of procedure relating to alleged obscene publications—

1. Prosecutions for the publication of obscene libels at common law.
2. Proceedings under the Obscene Publications Act, 1857.

The well-known test of obscenity applies equally to both. It is to be found in the judgment delivered by Cockburn C.J. in the Court of Queen's Bench in *R.* v. *Hicklin* (1868) L.R. 3 Q.B. 360: "*I think the test is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.*"

In the *Justice of the Peace,* Vol. 118, p. 696, reference is made to a judgment in the United States of Judge Woolsey (also referred to in Mr. St. John-Stevas' article in *The Criminal Law Review*) in which he says: "The meaning of the word 'obscene' as legally defined by the courts is—tending to stir the sex impulses, or to lead to sexually impure and lustful thoughts."

A special procedure

By the law of England as it stands the publication of an obscene libel is punishable as a misdemeanour. On the other hand, the Act of 1857, as was pointed out by Lord Goddard C.J. in *Cox* v. *Stinton* [1951] 2 K.B. 1021 was not intended as an instrument of punishment but as preventive legislation. It was meant to give the authorities the power of seizing obscene publications before they were distributed.

In *Thomson* v. *Chain Libraries* [1954] 1 W.L.R. 999 Hilbery J. pointed out that the Act makes an exception to the general rule that the prosecutor who affirms must discharge the burden of proof for that which he affirms. In that case a number of books and postcards had been seized from the defendants' premises, and the defendants were summoned to show cause why the publications should not be destroyed under the Act. The justices ordered the return of the publications. On appeal, a Divisional Court of the Queen's Bench Division (Lord Goddard C.J., Hilbery and Donovan JJ.), held that the justices took a wrong view of their functions. Said Lord Goddard : " It is not for the prosecution to proceed to read out particular paragraphs unless the justices ask the prosecution to address them or to point out some particular thing. It is for the justices to look at the publications themselves. I do not say that they need read every word of the publications ; of course, it may be that the police or other informant would mark certain passages which would show the justices at once that the books were obscene, or they could see whether the books were obscene. At any rate, it is for the justices to look at the books in order to come to their own decision. Then, if they think that the books are obscene, they must order them to be destroyed. They are required to do that, except where it may be necessary to keep them for use in other proceedings. What the Act is obviously contemplating is that the owners of these books could be prosecuted, and there was such a case at the Old Bailey a session or two ago, for publishing obscene literature. These books may have to be kept for the purpose of proof."

Law the same as in 1868

The case at the Old Bailey to which Lord Goddard referred was *R.* v. *Reiter* [1954] 2 Q.B. 16, which went to the Court of Criminal Appeal. The appellants had been convicted of publishing obscene libels in the form of seven books. On the first day of the trial before the Recorder of London the jury read the books. The defence contended that the books were not obscene by the standards of today, and during the course of the case they produced a number of other books which the jury were asked to examine to decide whether the seven books alleged to be obscene libels were obscene or not.

The appeals were on the ground, *inter alia*, that the Recorder had misdirected the jury by telling them in his summing-up that it would be wrong in law for them, in applying the standard of obscenity laid down in *R.* v. *Hicklin* to the books alleged to be obscene libels, to take into consideration the standard or kind of literature published and sold at the present time.

Lord Goddard C.J., delivering the judgment of the Court of Criminal Appeal dismissing the appeals, said that the Recorder said —and that court entirely agreed with him—that the law was the same now as it was in 1868. "It is common knowledge," Lord Goddard went on, "that nowadays novelists and writers discuss things which would not have been discussed in the reign of Queen Victoria; of well-known novelists George Eliot went perhaps in some places as far as the tendencies of her times allowed, and Anthony Trollope thinly veiled over certain things which nowadays many people would discuss between themselves, and they would not be thought any the worse for discussing them. But it is one thing to discuss a particular subject; it is quite another to discuss and write about it in the way it is discussed and written about in these books, which, unfortunately, I have had to look at for the purposes of this appeal."

Book itself the best evidence

As for the production of other books at the trial, Lord Goddard said that seemed to him to be absolutely wrong; and his Lordship went on to cite a passage from the opinion delivered in the High Court of Justiciary in Scotland by the Lord Justice-General (Lord Cooper) in *Galletly* v. *Laird*, 1953 S.C.(J.) 16—an appeal arising out of the conviction of a bookseller under section 380 (3) of the Burgh Police (Scotland) Act, 1892. Lord Cooper had said that to justify a conviction in a case of this type the court ought to be satisfied of two elements, *viz.*, (1) that the book or picture was of such a nature as to be calculated to produce a pernicious effect in depraving and corrupting those who were open to such influences; and (2) that such book or picture was being indiscriminately exhibited or circulated or offered for sale in such circumstances as to justify the inference that it was likely to fall (and perhaps intended to fall) into the hands of persons liable to be so corrupted. Later in Lord Cooper's opinion came the following passage which was quoted by Lord Goddard: "The book or picture itself provides the best evidence of its own indecency or obscenity or of the absence of such qualities; and if in any case the magistrate's decision is challenged, the only method by which an appellate tribunal could determine whether the magistrate was entitled to reach the conclusion which he did would be by examining the book or picture, not with a view to re-trying the case but solely with a view to discovering whether they revealed evidence on which a reasonable magistrate would be entitled to condemn them as indecent or obscene."

Lord Goddard said the opinion delivered by the Lord Justice-General put the matter as well as it could possibly be put, and the Court of Criminal Appeal desired to adopt every word of it.

Stephen J.'s view

In *R.* v. *De Montalk* (1932) 23 Cr.App.R. 182 it had been suggested by the Recorder of London in his summing-up that, although the matter was obscene, it would be a defence if publication were for the public good. He cited the view of Stephen J. as set out in Stephen's *Digest of the Criminal Law*. This view, as revised, is "submitted" in the 9th edition, p. 173, as follows: "A person is justified in exhibiting disgusting objects, or publishing obscene books, papers, writings, prints, pictures, drawings or other representations, if their exhibition or publication is for the public good, as being necessary or advantageous to religion or morality, to the administration of justice, the pursuit of science, literature or art, or other objects of general interest; but the justification ceases if the publication is made in such a manner, to such an extent or under such circumstances as to exceed what the public good requires in regard to the particular matter published."

It is to be observed that Lord Hewart C.J. in delivering the judgment of the Court of Criminal Appeal, dismissing the appeal in *De Montalk's* case made no reference to the view of Stephen J. and there is no judicial authority upon it.

Nor, so far as I know, is there any judicial utterance indicating the need for legislation relating to the law of obscenity. The test laid down in the Hicklin judgment seems plain enough—Lord Goddard referred to it in *Reiter's* case as "the classic definition" —though of course there may well be differences of opinion as to the standard to be applied.

There may indeed be differences of opinion as to the Draft Bill of the Society of Authors—whether legislation is necessary, and, if it is, whether it should take the form proposed. If it should be considered necessary I think there are two matters which might well require consideration—matters which are not referred to in the Draft Bill.

First, it may well be thought right that no prosecution should be initiated except with the consent of the Attorney-General. Secondly, it may well be considered reasonable that there should be a statutory time-limit for an alleged offence in respect of a book, that is to say, that a prosecution should be begun, say, within three years from the date of publication (which would have to be carefully defined). That would, of course, protect a bookseller who happened to stock a famous work such as *The Decameron*.

The Draft Bill

I turn then to the Draft Bill of the Society of Authors.

Clause 1 of the Bill provides as follows:

1. Any person who shall distribute, circulate, sell, or offer for sale any obscene matter shall be guilty of an offence:

Provided that no person shall be convicted of an offence under this section unless it is established by the prosecution either—

- (*a*) *That the accused intended to corrupt the persons to or among whom the said matter was intended or was likely to be so distributed, circulated, sold, or offered for sale; or*
- (*b*) *That in so distributing, circulating, selling, or offering for sale he was reckless as to whether the said matter would or would not have a corrupting effect upon such persons.*

Provided also that in any proceedings under this Act the author, publisher and printer shall have the right to give and call evidence.

It is to be observed, in the first place, that this clause refers to any person " who shall distribute, circulate, sell, or offer for sale any obscene matter." These words apply to a publisher or bookseller but not to an author or printer. Why is the author to escape liability? Surely in an appropriate case he should be charged with causing the matter to be published.

Next the clause seeks to impose on the prosecution the burden of establishing either that the accused intended to corrupt the persons referred to, or that he was reckless whether the matter in question would or would not have a corrupting effect upon them. In *De Montalk's* case counsel for the Crown (now Byrne J.) submitted that the intention to corrupt public morals is to be inferred from the act of publication itself; the prosecution need not give affirmative evidence of such intention. The court, however, expressed no opinion on this point. But if statutory effect were given to the clause set out above the difficulty of any prosecution succeeding is obvious. What publisher in fact intends to corrupt anybody? His real intention is to sell as many copies of any book for which he is responsible as possible. Again, what publisher is reckless as to whether the matter would or would not have a corrupting effect? Presumably he has read the manuscript, or it has been read for him, and he may or may not take a calculated risk. But it might be difficult indeed for the prosecution to establish that he was reckless.

Next it is to be observed that the author, publisher and printer are to have the right to give and call evidence. This phraseology would appear to be due to an oversight. A person who is not a party to the proceedings may give evidence, but he is not entitled to call evidence. And, according to Clause 1, neither the author nor the printer is to be a party to the proceedings.

Clause 2 is as follows:

2. In deciding, for the purposes of any of the provisions of this Act, whether any matter is or is not obscene, the court shall have regard to the following considerations:

(*a*) *The general character and dominant effect of the matter alleged to be obscene.*

(*b*) *Evidence, if any. as to the literary or artistic merit, or the medical, legal, political, religious, or scientific character or importance of the said matter; and for this purpose expert opinion shall be admissible as evidence.*

(*c*) *Evidence, if any, as to the persons to or among whom the said matter was, or was intended, or was likely to be distributed, circulated, sold or offered for sale.*

(*d*) *Evidence, if any, that the said matter has had a corrupting effect.*

(a) Lord Cooper said in *Galletly* v. *Laird* (*supra*) that "the book or picture itself provides the best evidence of its own indecency or obscenity, or of the absence of such qualities"; and the Court of Criminal Appeal was in full agreement with his opinion. If the court is to consider the general character and dominant effect of the matter alleged to be obscene presumably it would, generally speaking, be bound to acquit if only a few passages in a book were held to be obscene. In *Paget Publications* v. *Watson* [1952] 1 All E.R. 1256 it was held that a publication may be obscene if only part of it was obscene.

(b) If matter be obscene, does it become any less obscene if it has literary or artistic merit? If it is of a medical, legal, political, religious, or scientific character or importance would that not appear from the matter itself?

(c) Evidence relating to distribution, it is submitted, may be relevant, *e.g.*, as supporting the medical, legal, political, religious or scientific character or importance of the matter.

(d) Evidence that the matter had had a corrupting effect would probably be unobtainable; but it would still leave the court to decide the initial and real question, which is whether the matter is or is not obscene.

Clause 3 provides as follows:

3. In deciding whether, for the purposes of any of the provisions of this Act, any matter alleged to be obscene was distributed, circulated, sold, or offered for sale with the said intent or recklessness, the court shall have regard to the following considerations:

(*a*) *The general character of the person charged and, where relevant, the nature of his business.*

(*b*) *The general character and dominant effect of the matter alleged to be obscene.*

(*c*) *Any evidence offered or called by or on behalf of the accused person as to his intention in distributing, circulating, selling or offering for sale the said matter.*

If Clause 1 became law then presumably the considerations set out above would be relevant.

Clause 4 provides that the words "obscene" and "corrupt" shall be deemed to include any matter which, whether or not related to any sexual context, unduly exploits horror, cruelty or violence, whether pictorially or otherwise. These words were apparently intended to deal with "horror comics," now covered by a Government measure.

Clause 5 provides that the penalty for an offence shall be, on summary conviction, a fine not exceeding £50 or imprisonment for a term not exceeding four months, and, on conviction on indictment, a fine not exceeding £100 or imprisonment for a term not exceeding six months.

Clause 6 is designed to replace part of section 4 of the Vagrancy Act, 1824, and the whole of the Indecent Advertisements Act, 1889, in an altered form, with less particularity and with different penalties.

Clause 7 is designed to replace section 11 (1) (*b*) (*c*) of the Post Office Act, 1953, and in doing so to provide heavier penalties.

Clause 8 is in substitution for the Obscene Publications Act, 1857, and seeks to alter the procedure at present followed where matter alleged to be obscene is seized on a magistrate's warrant. It provides:

8.—(1) It shall be lawful for any magistrate, upon information on oath that—

(*a*) *any obscene matter is kept in any premises within his jurisdiction for the purposes of sale or distribution, exhibition for gain, letting upon hire, or being otherwise circulated for gain; and*

(*b*) *one or more articles of the said character have been sold, distributed, exhibited, lent, or otherwise circulated as aforesaid, at or in connection with such premises;*

and if it shall appear to him that the said sale, distribution, exhibition, lending on hire or otherwise circulating would have a corrupting effect on persons into whose hands the said matter was likely or was intended to fall, to issue his warrant authorising any constable to search for and seize all such matter within seven days from the issue of the said warrant, and to bring the matter so seized before him.

(2) *The said magistrate shall forthwith report the facts to the Director of Public Prosecutions and to the persons, if any, whose names appear on the matter alleged to be obscene as those of the author, publisher, printer or manufacturer thereof.*

(3) *If the Director of Public Prosecutions then gives his consent to further proceedings, but not otherwise, the said magistrate shall within seven days issue a summons requiring the occupier of the said premises to appear before the appropriate court of summary jurisdiction and show cause why the matter seized should not be destroyed.*

(4) *The said author, publisher, printer, distributor or manufacturer of the matter alleged to be obscene shall have the right to give and call evidence in order to oppose the making of an order for the destruction of the said matter; and it shall be the duty of the Director of Public Prosecutions to indicate to the court wherein lies the alleged obscenity of the matter under consideration.*

(5) *The court, if satisfied after considering all the foregoing evidence that the matter seized is obscene and has been kept for any of the purposes aforesaid, shall order that such matter be destroyed:*

Provided that such order shall not be carried into effect until the expiration of the fourteen days allowed by section 84 of the Magistrates' Courts Act, 1952, for the giving of notice of intention to appeal to quarter sessions against the said order.

(6) If the magistrate before whom the matter alleged to be obscene was originally brought, or the court which proceeds to hear the aforesaid evidence, decides that the said matter is not obscene, it shall be returned forthwith to the person from whom it was seized.

The police might well be required to report the facts to the Director of Public Prosecutions, but it should be no part of the duty of the magistrate to do so, nor to report the facts to the persons referred to.

If consent to further proceedings should be required it should be given by the Attorney-General and not by the Director of Public Prosecutions.

Again it is pointed out that only persons who were parties to the proceedings, that is to say, persons summoned to show cause why the matter seized should not be destroyed would have the right to call evidence.

Advocacy at Petty Sessions

By B. Fraser Harrison, *Solicitor*

(*Continued from p.* 158)

Witnesses

Interviewing witnesses

The solicitor must not only take a proof from his client, but also interview the witnesses. When there is time it is wise to see the witnesses and hear their versions of what occurred before the client's final proof is obtained.

Not only to save time, but also because the solicitor's task is psychologically simpler, it is better to see a witness at the solicitor's office if he will come. However, no one may force a witness to put himself to trouble or to give a statement, and an alienated witness may be the difference between an acquittal and a conviction, so the solicitor may have to visit the witness's house or work-place if the latter appears unco-operative.

A witness who has allied himself with the accused is as blind to unpleasant facts as the accused himself, and in an attempt to help will hide them from everyone, including the accused's solicitor. Such people are, of course, already favourably biased and forceful questioning will not alienate them.

The indifferent witness, on the other hand, merely wishes to get the interview over and is often too complaisant. It is tempting to take the all-too-helpful proof from him. If this is done his evidence under cross-examination may bear little relation to what he signed in the solicitor's office. This type of witness has to be carefully questioned, especially with regard to negative information. It is as important to record what he did not see or does not know of the episode as it is to write down what he in fact saw and knows, so that if the prosecutor "jogs his memory" sufficiently to enable him to give evidence, the defence can ask why he could not recollect these matters when they interviewed him; if he then insists that he told the solicitor for the accused when they met, the accused's advocate can produce his signed proof to the witness to refute this.

Proof taking

The quickest, but seldom the best, method of taking a proof is to dictate it to a shorthand writer. With a lengthy statement this may be a physical and economic necessity. Lay witnesses cannot dictate a statement in proof form and few uneducated people are able to tell a coherent story. The proof taker not only has to extract the information he requires by questioning, he also has to rephrase the greater part of it for the benefit of the shorthand writer.

The better method in most cases is to write or type the statement in the presence of the witness and, to avoid future disagreement with him as to what he said, date the proof and insist upon his reading and signing it. He has thus an opportunity of altering what has been written. Should it, nevertheless, be necessary to dictate the statement, send a copy of the transcription to the witness and ask him to read, sign and return it. Some solicitors object that if this is done the witness may think better of what he has related and alter the proof, but it is better that he should do so at this stage rather than at the trial.

The team spirit

Whether a witness is called by the prosecutor or the accused he is not a member of a team; his evidence ought not to be influenced by the side that calls him. Nor may the prosecutor or the accused claim any witness as being his "property." Any witness may, therefore, be interviewed by or on behalf of the prosecutor and the accused alike. If, however, a witness has already given a proof to the prosecutor the accused's solicitor should be careful to behave so that no one can allege that he has persuaded the witness to change his version of what occurred.

The right to interview a witness after he has been interviewed by the prosecutor or a witness who will almost certainly be seen and called by him should be exercised with extreme caution. The accused ought not to be present and the interview, arranged as openly as possible, preferably by letter, should take place in a normal manner in the solicitor's office or at the witness's home; not, for instance, in a public-house or at a street corner. In case the witness later alleges that the solicitor attempted to make him change his testimony, it is wise to have another member of the office present, who may, if it is felt necessary, make a shorthand record of the whole interview.

Compelling a witness to attend court

Witnesses are more reliable and helpful if they attend court willingly. If, however, a witness refuses to attend there are effective means of making him do so. These are outlined in the two following paragraphs.

Should a witness in a committal proceeding or the summary trial of an information or hearing of a complaint, which includes matrimonial or bastardy disputes, by a summary court, refuse to attend voluntarily as a witness or produce a document or thing, an application may be made to a magistrate under section 77 of the Magistrates' Courts Act, 1952, for a summons ordering the witness to do so; the summons is served by the police. In certain circumstances a warrant may be issued. A witness summons is applied for in a similar matter to other summonses and most courts have special days for making these applications; time will be saved if the applicant's solicitor asks the clerk when the application should be made.

When the accused has been committed to the assizes or to quarter sessions, subpoenas *ad testificandum* (compelling the witness to attend the court and give evidence) and *duces tecum* (compelling him to bring a document or thing to the trial) are obtained from the Crown Office, the clerk of assize or the clerk of the peace as the case may be. The service of these subpoenas is the responsibility of the accused and not of the police.

Assessing the evidence

The accused's defence is built upon his testimony and that of the witnesses in his favour. The less divergence there is between the various stories the more chance there is of the accused's defence being believed. This does not mean that all the evidence must coincide to the minutest detail. No two persons' recollections of a series of events will be identical ; one fact impresses itself upon one man's mind, whereas his friend will recall another. The two together, however, should be complementary.

When all the available witnesses have been seen, the solicitor, advised by counsel if necessary, decides which of them are to be called. What is required is quality, not quantity, of testimony. If two witnesses give almost identical evidence it frequently pays to call only one of them to the witness-box, choosing the one who gives the greater appearance of truth. If only one witness is called and he is believed, the other does no more than waste time and give the prosecutor another chance, by cross-examination, to throw doubt on the testimony of both. Should the court not believe the first witness, then the damage is usually done, and no matter how many more witnesses are called to repeat his testimony the court is unlikely to change its first impression. Although only one witness may be called in the end, it is often difficult to decide which one that will be until the actual day of the trial, particularly if the trial is a summary one ; it is wise, therefore, to ask all the useful witnesses to attend court.

When the episode that gives rise to the charge happens in a short space of time as, for example, in the case of a motor-car accident, it is likely that the witnesses will have no more than a fleeting impression of parts of the episode, each witness seeing something that the others missed. On these occasions the witnesses tend to side wholly with one or the other of the personalities involved, and all those favouring the accused should be called.

When, on the other hand, the episode is lengthy or complicated and a witness has had time to digest something more than a mere impression, his evidence may not be so emphatically for or against the accused, but rather helpful in one respect and adverse in another. In this event the solicitor has to decide whether or not to use the witness. Generally speaking, the rule should be to abandon the witness unless the part of his evidence that is favourable is so essential that to be without it makes the accused's chance negligible.

(*To be continued*)

Diplomatic Immunity

By J. T. TAYLOR, LL.B.,
Deputy Chief Clerk, Metropolitan Magistrates' Courts

It seldom happens that the criminal courts are faced with the question whether a defendant before them is entitled to claim immunity from their jurisdiction by reason of his diplomatic status, and the topic is therefore dealt with in a very cursory manner in almost all the books of reference usually available. Nevertheless, the question when it does arise, is from its very nature of great importance, and any answer thereto may well have results and repercussions far beyond the local jurisdiction.

The initial question whether diplomatic status carries immunity from the criminal law has never been posed in such a manner as to call upon any court of superior jurisdiction in this country to give a definite and direct answer, but Professor Glanville Williams in his recent book, *Criminal Law—The General Part*, expresses the opinion that it does in fact exist. In *R.* v. *A. B.* (*otherwise Kent*) [1941] 1 K.B. 454 a former employee of a foreign Embassy was charged with offences against the Official Secrets Act, 1911, and with larceny, the Ambassador having previously waived any privilege which the defendant might have enjoyed. The defendant claimed, *inter alia*, that the waiver did not operate immediately, and that he should, therefore, have had an opportunity to settle his affairs and leave the country. The submission was overruled, and it was held that once the privilege, if it existed, had been waived, proceedings might be taken immediately, but it is to be noted that the Court of Criminal Appeal did not say either directly or by implication that the proceedings might have been commenced even if privilege had not been waived. In a recent case in Northern Ireland of attempted smuggling through the diplomatic bag, the alleged smuggler was released before being charged, once his status had been established. His Ambassador waived privilege a day or so later, and a warrant was then obtained, though the defendant had in the meantime left the jurisdiction. The better view would therefore appear to be that of Professor Glanville Williams, that a diplomatic immunity extends to criminal as well as to civil proceedings.

There can be no doubt that the diplomatic representative of another country, duly authorised by his own government and accepted by Her Majesty's, is by international usage privileged. In his lecture on "Persons entitled to Diplomatic Immunities" (printed with other matters in his book *International Law*) Sir Cecil Hurst has classified the persons entitled to diplomatic immunity under three heads:—

1. the official staff;
2. wives and families of members of the first class;
3. members of the unofficial staff.

He quotes with approval a passage from the judgment in the French case *Dientz* v. *de la Jara* (1878) J.D.I.R. 500, in which was enunciated the general principle that the immunity derives from the privileged position of the Ambassadors themselves, and extends "á tous les gens, en un mot, dont le présence est nécessaire pour leur permettre de représenter dignement leur pays et d'accomplir complètement et utilement leur mission."

Official staff

The official staff would appear to comprise all those engaged in assisting the Ambassador or head of the mission in his official duties. In addition to counsellors, secretaries, attachés and other senior officials, whose position is clear, it would seem that all office staff, however humble their official standing, even the office-boy if one should be employed, would be protected. The immunity extends to all, whether nationals of the State represented or not. In *Macartney* v. *Garbutt* (1890) 24 Q.B.D. 368, a civil action, it was decided that even a British subject employed as a counsellor at the Chinese Legation was entitled to immunity.

Families

The second class scarcely need comment, except to refer to the practice which has grown up in recent years of appointing married women to senior diplomatic posts. It would seem that the basis of the privilege enjoyed by this class is that the wife and children of a member of a diplomatic mission are regarded as being under the protection and control of the husband and/or father, but whether the husband of a married woman who herself holds a post of such a nature can be regarded as being under the control and protection of his wife so as to entitle him, the husband, to immunity is less clear. It is to be noted that the immunity probably continues to exist, even though the husband and wife are no longer cohabiting.

Unofficial family

The third class comprises persons genuinely and bona fide employed by members of the first class, the test being whether they look for payment of salary to the State or government represented, or to some individual. It is not clear whether the rule is wide enough to confer immunity if the domestic servant, though nominally employed by a member of the first class, is employed for the benefit of his wife or children, such as in the capacity of personal maid or governess.

There are also opposing views on whether the nationality of the servant affects the issue. It would appear, however, in view of the decision in *Macartney* v. *Garbutt*, above, that the wiser course for an English court to follow if privilege were claimed by a British subject employed by a foreign diplomat would be to discontinue the hearing. It is interesting that in the case mentioned below heard last year in a metropolitan magistrates' court, the employee though not a British subject was not a national of the State whose Ambassador employed him. In any event, the privilege ceases immediately on the termination of the employment and does not operate retrospectively so as to prevent proceedings being taken in respect of acts done while the immunity existed (see *R.* v. *A. B.*, above). Even if the employee were charged and successfully claimed immunity, it would appear impossible for him, if charged again after his employment had terminated or immunity had been waived, to plead *autrefois acquit*, as he could not have been in peril on the first occasion.

A final point to be noted is that the employee must be engaged on something other than a temporary basis, and that a casual contract of service, such as between a taxi-driver and hirer would not suffice.

The diplomatic list

A list published at intervals by the Foreign Office gives the names of persons composing the diplomatic establishment and household of the various Embassies. By section 6 of the Diplomatic Privileges Act, 1708, it is provided that no person shall be proceeded against for arresting the servant of an ambassador or public minister unless the name of such servant has first been registered in the office of one of the Principal Secretaries of State, and by him transmitted to the sheriffs by whom the list is exhibited to the public. The primary purpose of the list is therefore the protection of the sheriffs, and it is a condition precedent to successful proceedings for wrongful arrest that the name of the person arrested should appear on the list. But current practice appears to be to regard a person whose name appears therein as entitled to immunity.

In view of the judgments in *Engelke* v. *Musmann* [1928] A.C. 433, particularly that of Lord Phillimore at p. 455, the list cannot be regarded as conclusive, and a person whose name does not appear may nevertheless be able to prove his status in the service of a diplomatic agent or representative by other evidence. It is unlikely that a person who himself enjoys diplomatic status would need to prove himself in this manner, but in the case in a metropolitan magistrates' court mentioned above, a defendant whose name did not appear in the list, claimed immunity from the jurisdiction on the ground that he was a domestic employee of an ambassador, and was allowed to call evidence to substantiate his claim. The evidence was accepted and he was discharged without any plea being taken. (See *Journal of Criminal Law,* Vol. 18, p. 113.)

Readers of the daily press last year had an opportunity of appreciating that the privilege under discussion extends to the official premises occupied by a diplomatic mission. The shooting affray which occurred at the Embassy of a South American Republic was treated as a domestic matter of the State concerned, and the survivor went to his own country where he was tried on various charges.

In conclusion, the Act of 1708 itself deserves brief mention, if only because of the circumstances in which it came to be enacted. Possibly because of those circumstances, the Act has always been regarded as being merely declaratory of the common law. It provides that all writs and processes against anyone who comes within the categories set out above shall be null and void, and that any person suing or prosecuting or executing any such writ or process may be convicted. There is an exemption from those provisions with regard to merchants or traders who put themselves in the service of an ambassador, and also, as mentioned above, with regard to those whose names do not appear in the official diplomatic list.

The full story of the events which led to its enactment is told in many books of international law. It will be sufficient here to recall that the Russian Ambassador, just before his return to Russia, was arrested in the street at the suit of certain London tradesmen to whom he owed a total of some £300, a sum of greater significance then than it is today. The ambassador was speedily released but recrimination between Russian and England followed. Among other steps taken to remedy the situation, Parliament passed the Act in question, a specially printed copy was presented to the Tsar with an autograph letter from Queen Anne and the incident closed. There are, in other codes, similar statutes and ordinances, some of which followed similar incidents, which, it is to be hoped, are unlikely to recur.

Trials of a Colonial Beak

(*Continued from p.* 153)

By OLIVER SHAW, *Barrister-at-Law*

Work in chambers

The work in chambers was considerable. In addition to writing up judgments, a matter requiring some time and care where legal issues had been raised and the case might go to appeal, there was always a continuous stream of documents to sign. One hardly ever entered chambers without seeing a pile of papers of one sort or another on one's desk for signature, or perhaps a police constable would be waiting personally to swear his information for the purpose of having a search warrant signed. This often happened in off-duty time, and constables would come at all hours of the day to get warrants signed for a search or an arrest which was urgent. This was far from routine as far as the magistrate was concerned, and each warrant had to be scrutinised carefully. I remember one case where I was presented with an arrest warrant for signature, and on reading it through I discovered that the suspect was wanted for the alleged stealing of a house.

Police etiquette

The European police officers do not always set their African colleagues a good example in the matter of etiquette, as may be gathered from the fact that a quite senior police officer on one occasion, whilst conducting a case, informed one of my colleagues in open court that if he granted bail to the prisoner he, the magistrate, would be reported to the proper authorities. I myself have been shouted at in court more than once by African police inspectors. Such incidents, however, are happily rare.

The judiciary

From the point of view of basic principles the system of judicature has this characteristic, which, as far as I know, is common to all British colonies, namely, that the district magistrates are civil servants, employed and paid by the Government and responsible directly to the Government. The doctrine of the separation of power, which is a fundamental article of the constitution in Britain, does not apply to colonial magistrates at all, who hold office at the pleasure of the Crown. Indeed, a recent High Court decision in England emphasised the fact that this principle applies equally to colonial High Court judges. In these days when many colonies are advancing rapidly towards self-government on the democratic model, this might appear to some to be an anomalous position in which the administration of justice with that punctilious impartiality which prevails in England might well be difficult, if not dangerous, the more so in conditions under which the police are Government servants equally with the magistrates.

This point has added force in the Gold Coast where district magistrates are required to serve a probationary period of three years, after which they are either confirmed in their appointment or not at the pleasure of the Crown. I believe this period is rather longer than that prevailing in some other colonies. Whether or not that is a good system is perhaps questionable.

The whole of the Gold Coast, including Ashanti, is served by fourteen or fifteen district magistrates, about a third of whom are Africans. The actual number on duty in the colony at any time is slightly less than this total because of absentees from time to time due to leave, sickness, and performing the duties of Acting Judge, which good fortune occasionally comes to senior men. As I have already indicated, the Government agents assist to some—though a decreasing—extent in the colony and Ashanti. In the Northern Territories, however, a large area to the North of Ashanti, there are no professional district magistrates and the whole of the work is done by the Government agents. Serious cases will, of course, be dealt with as a preliminary inquiry and sent to the assizes at Tamale, which is on the High Court Judge's Circuit.

The senior or sole district magistrate for each judicial area has to forward to the Chief Justice monthly a return showing the number of cases pending or part heard, brought forward from the previous month, the number of such cases disposed of during the month and those outstanding at the end of the month. The figures are analysed under headings such as Criminal Cases, Civil Cases, Summonses to Show Cause, Coroner's Inquests, etc. One is expected to clear one's list as one goes along as far as possible and any substantial increase in outstanding cases, from whatever cause, is queried and has to be explained. The result is that many magistrates find themselves overworked, and the more conscientious one is the greater the strain.

The legal profession

The volume of work on the whole is on the increase. More young African barristers set up in practice and thus a greater proportion of accused persons tend to get an adequate, if longer, defence, and the general increase in literacy and education makes people more conscious of their rights. Furthermore, the greater economic prosperity of the Gold Coast in recent years enables more people to afford the luxury of a professional defence. The two branches of the legal profession are fused and solicitors and barristers alike practise and have right of audience in all courts. Many of the legal firms style themselves "Barristers and Solicitors," and all branches of legal work are interchangeable. Suggestions have been made from time to time to separate the branches, on the English model, but the proposal has not been implemented. Many members of the legal profession are opposed to separation of the two branches and consider that their interests are better served by the fused system. The standard of professional advocacy is, of course, on rather a different plane from that prevailing in England. I have the impression that too many African barristers merely take their examinations and go back to their own country to commence practice without going into English courts enough or even at all. Whatever the reason may be for this, it is a pity, for many of them could do so much better if they had the opportunity to practise in or even to spend six months or so observing the procedure in English courts. Most of them do not lack confidence and are quite good speakers, but some of them adopt the now old-fashioned method of dramatic advocacy and address the court as if it were a public meeting. A common fault is to couch their speeches to a professional magistrate in language more appropriate to a jury. Many of the more experienced counsel, however, are very effective cross-examiners, and most of the men who have been practising any length of time command very large fees. One result of the fused system is that young men starting at the bar are able to get established within a very short time, and often, after a year or two, are able to earn incomes which it would take a man seven or ten years to achieve in England.

The court buildings

As far as the court buildings themselves are concerned, they are fairly adequate in the larger centres. The Court Registrar and his staff are available, and a room is provided as the magistrates' chambers. Reasonable library facilities are to hand and there is generally an electric fan in the court. In some of the country places, however, conditions are woefully primitive, there being neither chambers nor cooling apparatus and, in some courts, no room of any sort where one can retire to consider a point or have any privacy at all. In some of these country courts there is even no washing or toilet accommodation, the Government Rest House, which might be a mile or so away, being the nearest refuge. I remember one occasion when the court at a station in the " bush " was being used by an administrative officer for a special inquiry, and I had to sit under a nearby bungalow. It will be appreciated that many bungalows are raised off the ground by wooden pillars seven or eight feet in height. On this particular occasion it was extremely hot, and drops of melting tar from the bungalow boards above fell on to my record book. Shortly afterwards my court clerk complained that some of it had fallen on and ruined his smart, white coat.

The audience

The courts are always well patronised by spectators. They usually fill up all the benches and stand round the sides as well. Sometimes one gets regular attenders, usually old men, who are possibly elders of the village. The story is told (let us hope it is apocryphal) of one particular magistrate who used to watch a group of such old men who sat regularly on the front bench. If they nodded their heads at the end of a case he would pronounce a verdict of " Guilty." If they shook their heads the prisoner was acquitted! Women often attend court with their babies on their backs and feed them openly. The sight is so common that nobody thinks of staring. I have even seen a female witness feed her baby in the witness box to stop it disturbing the dignity of the proceedings by crying.

Duties as coroner

I have already said that in addition to their civil and criminal jurisdiction district magistrates are ex-officio coroners within the territorial limits of their jurisdiction. The Government agents in their capacity as magistrates hold the office of coroner in areas not covered by district magistrates and in areas which are so covered, deputy coroner. In any case of unnatural or violent death, where the police become aware of it, they prepare an inquest docket containing all relevant reports and statements of witnesses, etc., which are later submitted to the coroner, whose duty it is, under the Coroners' Ordinance, to decide in his discretion whether an inquest should be held or not.

The principal causes of accidental death are motor traffic accidents, inadvertent shootings whilst hunting, and deaths during storms, for example, drowning whilst trying to cross a swollen river or death by falling trees. Where the deaths are obviously due to misadventure and the police are quite satisfied that there is no question of foul play, inquests are usually dispensed with. It is provided by the Coroners' Ordinance that where the death is to be the subject of a criminal charge against any person or persons, the inquest shall be held over until the criminal proceedings are completed. It is interesting to note that as regards suicides, which are quite frequent, the reasons are pretty much the same as in this country, namely, financial or domestic worries, and cases where the deceased was of unbalanced mind. Any public benefit which might be derived from the holding of an inquest is in many cases rendered nugatory by a clause in the Coroners' Ordinance which provides that the coroner is not permitted to return a finding of negligence or other culpable conduct against any particular person.

One of the more macabre duties of the district magistrates in their capacity as coroners, when stationed in Accra, is to conduct inquests on murderers after judicial executions. I have performed this unpleasant duty several times and although the proceedings are more or less a formality, one was expected to view the body and it was a task I was always glad to see finished.

Dangerous and Careless Driving

By F. G. Hails

Clerk to the Dartford Justices

The offences

The Road Traffic Act, 1930, s. 11, provided that a driver might be convicted of the offences of driving a motor-vehicle on a road recklessly, or at a speed, or in a manner which was dangerous to the public having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which was, or might reasonably be expected to have been on the road. Section 12 of the same Act created the offences of driving a motor-vehicle on a road without due care and attention or without reasonable consideration for other persons using the road. It is clear from the penalties laid down in the sections that the offence under section 11 is more serious than that under section 12.

The difference between the two offences has not to this day been authoritatively defined: in a case heard a year or so ago at the Birmingham Assizes, reported so far as we know only in the local press, Mr. Justice Sellers said, by way of *obiter dictum*, that for an offence under section 11 it is necessary to prove some deliberate act as opposed to mere inadvertence, and we have heard this view advanced in argument. We have never heard any case law cited in support of the theory, and we think we are right in saying that the reasoning behind it has never received either judicial assent or dissent, apart from the one case we have mentioned. There can be little doubt that in magistrates' courts up and down the country it is the practice to regard the difference between the two offences purely as a matter of degree. It may be that this is the reason why in a number of police forces it is the custom to lay two informations against a driver, one under section 11 and the other under section 12, in the hope of securing a conviction on one or the other.

Preferring two charges

It is probable that the practice of preferring two charges arose early in the life of the Act of 1930, but it is astonishing that the practice still prevails today, for the Road Traffic Act, 1934, s. 35, provides that where a person is charged before a court of summary jurisdiction with an offence under section 11 of the 1930 Act, and the court is of the opinion that the charge is not proved, it may at any time during the hearing or immediately thereafter, without prejudice to any other powers it may have, direct or allow a charge under section 12 to be preferred against the defendant, and proceed to hear that charge at once, provided that the defendant or his advocate shall be allowed to answer the new charge by way of cross-examining any witnesses previously, or otherwise: if the court consider that the defendant is prejudiced by the change of charge it must adjourn the hearing. Admittedly, the procedure is rather cumbersome, and in *Edwards* v. *Jones* [1947] K.B. 659 Lord Goddard C.J. said: "It might have been a useful amendment of the law if the Act of 1934 had provided that where a person was charged with the offence of dangerous driving it should be open to the justices to convict him on that information of the offence of driving without due care and attention. . . ." This is, obviously, simpler, and although the present Road Traffic Bill in its original form did not provide for a change in procedure, an amendment was suggested on the report stage in the House of Lords to give magistrates this power on summary hearing.

Moreover, if the justices are hearing the case as examining justices, either under the Magistrates' Courts Act, 1952, s. 18, or because the defendant has elected to be tried by a jury under the right conferred by section 25 (1) of that Act, then they are not a court of summary jurisdiction, so have no power to direct or allow a charge under section 12, but must either commit the defendant for trial for any indictable offence disclosed by the evidence, or discharge him. And if a defendant is committed for an offence under section 12, then the jury has no power to convict him of the minor charge. These are serious weaknesses, although they can be overcome by the issue of a summons under section 12 after the examining justices have dealt with the case, provided of course that this has taken place within six months of the incident giving rise to the charges, and the defendant has been given the necessary warning as required by the Road Traffic Act, 1930, s. 21. We are well aware that on one occasion recently when this was done the prosecution was criticised by a learned Recorder (see [1954] Crim. L.R. 537), but with all due respect we hold the view that the action of the informant was not merely legally correct, but perfectly proper. After all, had two informations been laid in the first place, that for the minor offence could have been adjourned *sine die,* under the Magistrates' Courts Act, 1952, s. 14 (2) to await the result of the hearing before the jury, and surely the prosecution is not to be blamed if, having relied on the power of a summary court to order the preferring of a reduced charge if thought fit, it decided subsequently, when the defendant elected to go for trial, to ensure that by exercising his right to be tried by a jury he did not put himself in a better position than if he had consented to the magistrates dealing with his case.

The duty of the informant

The actual charge to be preferred must initially be decided by the informant, and in this connection we must consider the decision of the Divisional Court in *R.* v. *Nuneaton JJ., ex p. Parker* [1954] Crim.L.R. 939. Here a magistrate, owing to a misunderstanding of certain dicta of Devlin J. in *Re Beresford* (1952) 36 Cr.App.R. 1, had, wrongly as it was held, tried to ensure that all informations laid for this class of traffic offence should be for offences under section 11, so that the court could if necessary order the preferring of a charge under section 12. In his judgment in the *Nuneaton* case Lynskey J. said: ". . . the police ought always, in my view, where the facts support it, to bring the more serious charge. . . ." Now, there must be many occasions when the police, even in those rare cases where they take legal advice before laying the information, are in serious doubt as to which charge to prefer. Surely, having taken a decision to proceed under section 11 they are perfectly justified, let alone entitled, to leave any question of a reduced charge to the court, so long as the court has power to order that a reduced charge be preferred. After all, we have even heard it argued, where informations under section 11 and section 12 have been laid, that this is in itself indicative of some doubt in the mind of the informant as to which charge should have been preferred originally.

Withdrawal of the more serious charge

But to return to those cases in which the prosecution does prefer two informations: it may be that this is done with a view to striking a bargain with the defence to offer no evidence on the major charge in consideration of a plea of guilty to the minor. If this is so, it is grossly improper, and yet there may well be a suspicion that something very much like this goes on, for in areas where the practice of laying two informations prevails it is far from uncommon for the prosecution to announce to the court that it is prepared to offer no evidence on the charge under section 11, as the defence is prepared to plead guilty to that under section 12: this usually happens where both sides are represented. What, in these circumstances is the duty of the Bench: should it, without further investigation accept such a suggestion, or should it hear from the prosecution the reason for this change of mind? It is arguable, in extension of the principles enunciated in *R.* v. *Nuneaton JJ.*, that it is for the prosecution to decide on which charge to proceed. On the other hand, in *R.* v. *Bodmin JJ., ex p. McEwen* [1947] K.B. 321 it was said by the Lord Chief Justice that justices should never reduce a charge merely for the purpose of dealing with it summarily, although they must take into account what the prosecution and the defence say as to whether the charge is a proper one to be dealt with in this way. We suggest that this is analogous, and that once an informant has laid an information for dangerous driving he should explain to the court why he has changed his mind before a plea to a lesser charge is accepted.

Procedure

Having given our opinion and presented our arguments, we should like to bring forward a procedural matter. If two informations are preferred, one under section 11 and the other under section 12, they must not be heard together unless the accused, having been asked if he is prepared to do so, consents: *R.* v. *Ashbourne JJ., ex p. Naden* [1950] W.N. 51. If the defendant does not so consent, then the charge under section 11 should be heard first, otherwise it is possible by pleading guilty to that under section 12 he might be able to plead *autrefois convict* in respect of the major charge. If the Bench decides, where the section 11 charge is taken first, not to convict, then unless the provisions of section 35 of the Act of 1934 are invoked, it will be necessary to go through all the evidence again: but as this could be done without laying a second information in advance, it is difficult to see the point in doing so at all!

Practice and Procedure

Quarter Sessions

Sentencing probationer for original offence

When a person has been placed on probation or conditionally discharged by a court of quarter sessions the first intimation to that court that he has been found guilty of a further offence is often an inquiry from the police or a probation officer as to whether the court wants him brought up for sentence for the original crime. On receiving instructions that it does, proceedings are taken under section 8 of the Criminal Justice Act, 1948, and in due course the offender is brought before the court.

This procedure involves two separate sets of proceedings. First, the proceedings which result in conviction for the second offence, and secondly, when that has been disposed of, the proceedings to bring the offender before the court which made the original order. This is cumbersome and time wasting and also, in most cases, quite unnecessary. The vast majority of offenders are dealt with in magistrates' courts, and when a magistrates' court has convicted and dealt with a person subject to an order of probation or conditional discharge made by quarter sessions it may commit him in custody or release him on bail till he can be brought before that court, and the clerk is required to send up a copy of the minute or memorandum of conviction (Criminal Justice Act, 1948, s. 8 (4)).

It is difficult to understand why this convenient procedure is not more often used. It may be that a feeling lingers on in some quarters that sentence for the original offence should not be the automatic result of conviction for another crime committed during the currency of the first order, but, if probation is to be the discipline which is intended, it is essential that the words " but if you commit any other offence during the next . . . years you will be brought back and punished for this offence " shall mean what they say. It is to be hoped that much more general use will be made of the simple piece of machinery which makes them effective. [Brigadier A. C. C. Willway, C.B., C.B.E., T.D., D.L., Deputy Chairman, Surrey Quarter Sessions.]

Magistrates' Courts

Notifying a magistrates' court's decision to quarter sessions

Rule 53 of the Summary Jurisdiction Rules, 1915, provided that, after notice of appeal to quarter sessions had been given against the conviction or order of a court of summary jurisdiction, the justices' clerk was to lodge with the clerk of the peace " the conviction or order in question . . . drawn up in proper form." Fresh wording for this rule was substituted by the Summary Jurisdiction Rules, 1933 ; this required the justices' clerk to transmit to the clerk of the peace " in proper form the decision against which the appeal is brought." The earlier part of the substituted rule read " Formal convictions or orders . . . shall not be drawn up unless required for an appeal or some other legal purpose." Acting on this, courts of summary jurisdiction continued to send forward a formal conviction or order upon receiving notice of appeal to quarter sessions.

The Summary Jurisdiction Rules have now been replaced by the Magistrates' Courts' Rules, 1952, rule 58 of which enjoins the justices' clerk to send to the clerk of the peace in an appeal case " a statement of the decision from which the appeal is brought." Somewhat surprisingly, no indication is given of the form the " statement of the decision " should take. It sounds as if something quite informal is intended. One knows that assize and quarter sessions courts commonly supply copies of convictions which show the offence only in the most general terms. Would it be a sufficient compliance with rule 58 to follow this example and draw up a document which merely stated, for example, that the appellant had been sentenced to six months' imprisonment for larceny in a dwelling-house? Whatever the strict law of the matter may be, the consequences of acting on any such interpretation of the rule might very well be an adjournment of the appeal so that a formal conviction or order could be prepared. For an appeal to quarter sessions may be on law as well as on fact, and it is open to the appellant to challenge the validity of the conviction or order in question on purely technical grounds. In such circumstances production of a fully particularised document would be essential.

It would seem the wisest course, therefore, to continue to follow the old practice, and, no doubt, most magistrates' courts would find a formal conviction or order the most convenient way of giving a " statement of the decision " of the court. But it would be interesting to know what the draftsman of the rules had in mind when he changed the previous phraseology. Presumably some economy in procedure was hoped for ; in this matter, however, such economy may turn out to be expensive in time and trouble. [A. E. Jones.]

Case and Comment

The reports of cases to which initials are appended hereunder have been specially prepared for *The Criminal Law Review* by the following reporters: —

HENRY PALMER, *Barrister-at-Law.*
J. D. PENNINGTON, *Barrister-at-Law.*

Animals—*By-law prohibiting keeping of noisy animals.* See MORRISSEY *v.* GALER, p. 252, below.

Assault—*Alleged assault by schoolmaster—lack of evidence*

MADIGAN *v.* ADOLPHE [1] (Q.B., Divisional Court: Lord Goddard C.J., Ormerod and Gorman JJ.: March 3, 1955) (*The Times*, March 4, 1955).

A schoolmaster was charged before justices of assault upon a pupil. In evidence the pupil said that the master was standing about four yards from him. "He told us all to look up at the board—I didn't hear him—he threw a hard wooden-backed duster at me—it hit me under the right eye and fell to the floor." In cross-examination he said: "I didn't see him throw it, but I know he threw it . . . I was fiddling about with a ruler before this happened . . . I don't know if duster hit ruler and ruler hit my eye—if duster slipped from his hand it would be an accident—I say he threw duster because I have talked to others about it."

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[1] For the appellant: *Neil McKinnon* (instructed by W. Ewart Craigen, Margate). The respondent did not appear and was not represented.

Another pupil gave evidence in support of this evidence, but agreed that he did not see the duster thrown. The master, in evidence, said that the pupil was not paying attention but playing with his ruler. "On swinging round from board I made to knock the ruler from his hand with duster—the duster left my hand—it slipped and ended up on the floor—I did not throw duster at the boy—the duster hit the ruler which hit the boy's face." The justices convicted the master and fined him £1. On appeal:—

Held, allowing the appeal, that the justices ought not to have convicted because there was no evidence that anything had been thrown. [J. D. P.]

Court of Criminal Appeal—*Procedure—frivolous or vexatious point of law—summary disposal*

R. *v.* ANDREWS [2] (Court of Criminal Appeal: Lord Goddard C.J., Cassels and Gorman JJ.: January 21, 1955).

A. was convicted of conspiracy. Two other persons who were charged with him had been previously dealt with and were not, therefore, with A. in the dock at the trial. A. appealed against his conviction on the ground that the two other conspirators ought to have been tried with him, and the court ordered the case to be put in the list for summary disposal under section 15 (2) of the Criminal Appeal Act, 1907.

Held, dismissing the appeal, that the point of law raised was a perfectly hopeless one and that the best way of dealing with it was by way of summary dismissal under section 15 (2). [H. P.]

COMMENTARY. The Criminal Appeal Act, 1907, section 15 (2), provides:—"If it appears to the registrar [of the Court of Criminal Appeal] that any notice of an appeal against a conviction . . . does not show any substantial ground of appeal, the registrar may refer the appeal to the court for summary determination, and, where the case is so referred, the court may, if they consider that the appeal is frivolous or vexatious, and can be determined without adjourning the same for a full hearing, dismiss the appeal summarily, without calling on any persons to attend the hearing or to appear for the Crown thereon."

Evidence—*Assault—alleged assault by schoolmaster.* See MADIGAN *v.* ADOLPHE, p. 244, above.

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[2] The appellant appeared in person. The Crown was not represented.

False Pretences—*Obtaining credit by fraud—part exchange of motor-cycle on hire-purchase not "obtaining credit"*

R. *v.* MITCHELL [3] (Court of Criminal Appeal: Lord Goddard C.J., Ormerod and Gorman JJ.: February 21, 1955).

M. pleaded guilty to two counts, the first of stealing a motor-cycle and the second of obtaining credit to the amount of £65 from a firm under false pretences or by means of fraud other than false pretences. M. had been in possession of a motor-cycle under a hire-purchase agreement. While the hire-purchase agreement was still running, he took the motor-cycle to a firm, representing to them that it was his own, and induced them to sell to him another motor-cycle on hire-purchase terms. The firm credited M. with £65, being the second-hand value of the original motor-cycle. M. appealed against his sentence of three years' corrective training on both counts to run concurrently.

Held, that M. was properly convicted of stealing on the first count and therefore the sentence would stand. But the learned recorder was wrong in accepting a plea of guilty to the second count. M. had not obtained credit by fraud. To obtain credit under the Debtors Act, 1869, it is necessary for a debt to be created; here M. had been credited with a sum of money in respect of a motor-cycle which the firm believed to be the property of M. That did not amount to obtaining credit and, therefore, the conviction on the second count would be quashed. [H. P.]

COMMENTARY. See Archbold, 33rd ed., 1347.

Fraudulent Medium—*Fraudulent Mediums Act,* 1951—*fortune-telling.* See DOHENY *v.* ENGLAND, p. 256, below.

Hire-Purchase—*Obtaining credit by fraud—part exchange of motor-cycle.* See R. *v.* MITCHELL, p. 246, above.

Intoxicating Liquor—*Club—application to strike off the register—powers of justices*

R. *v.* GLAMORGAN JUSTICES, *ex p.* BARRY DOCK CORONATION WORKING MEN'S CLUB AND INSTITUTE [4] (Q.B., Divisional Court: Lord Goddard C.J., Ormerod and Gorman JJ.: February 28, 1955).

The club was summoned before the justices to show cause why they should not be struck off the register on the grounds that the club was not conducted in good faith as a club, that illegal sales of intoxicating liquor had taken place on the club's premises and that persons who were not members were habitually admitted to the club's premises merely for the purpose of obtaining intoxicating liquor contrary to section 144 of the Licensing Act, 1953. At the hearing before the justices, the complainant withdrew his complaint that the club was not conducted in good faith as a club. The club's solicitor admitted that illegal sales had taken place and that persons who were not members were habitually admitted for the purpose of obtaining intoxicating liquor. The justices refused to strike the club off the register but ordered the club to pay 50 guineas costs. The club applied for an order of certiorari to quash the justices' order on the ground that as the justices did not strike the club off the register the order as to costs was (*a*) bad in law; (*b*) contrary to the provisions of section 55 (1) of the Magistrates' Courts Act, 1952; and (*c*) in excess of the justices' jurisdiction.

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[3] The appellant did not appear and was not represented. The Crown was not represented.

[4] For the applicants: *David Pennant* (instructed by Rhys Roberts & Co. for Myer, Cohen & Co., Barry). For the respondents: *John Rutter* (instructed by Torr & Co. for R. H. C. Rowlands, Cardiff).

Held, granting an order of certiorari, that as the justices did not strike the club off the register, they had no jurisdiction to order the club to pay costs.

Lord Goddard C.J. said: "I have no doubt that the justices thought they were giving what is now, under the Criminal Justice Act, a conditional discharge; but they cannot give a conditional discharge because in this case it was a summons to strike the club off the register. The club were not being charged with any offence for which a penalty could be imposed. If the police had prosecuted the secretary or manager of the club, he might have been convicted of illegally supplying liquor and no doubt would have been fined, but this was simply a summons to strike the club off the register which they did not oppose. How far, if no opposition is offered to the striking off, the justices have power to make an order for costs or it is proper to make an order for costs, I need not consider. All I say here is that as the justices did not strike the club off the register they had no jurisdiction to order the club to pay costs."

[Reported by Miss C. J. Ellis, *Barrister-at-Law*.]

Intoxicating Liquor—*Supper hour certificate—drinks served with sandwiches—whether drinks served with meal*

SOLOMON *v.* GREEN [5] (Q.B., Divisional Court: Lord Goddard C.J., Ormerod and Gorman JJ.: February 28, 1955) (*The Times*, March 1, 1955).

The defendant was the holder of a justices' licence in respect of a restaurant authorising him to sell intoxicating liquor on the premises. The licensing justices had granted a supper hour certificate under section 104 of the Licensing Act, 1953, authorising the defendant to increase the permitted hours from 10.30 p.m. to 11.30 p.m. On June 3, 1954, at 10.30 p.m. a waitress went to all customers and asked: "Are you staying?" She had with her sandwiches and sausages on sticks, and to those indicating their intention of staying she served such food as they required, usually sandwiches, and took payment. Customers were served with intoxicating liquor at or shortly after the time when the food was supplied. Thereafter they were each supplied with two further drinks, the last order being fulfilled at 11.20 p.m. After the first order no additional food was supplied when further intoxicating liquor was served. The justices were of the opinion that the words "at a meal supplied at the same time" in section 104 did not mean that intoxicants had to be delivered to the customer only side by side with a meal or part thereof, and they came to the conclusion that the defendant was genuinely serving food, and not using the pretence of serving it as an excuse to serve drinks for an additional hour. They thought that, although the defendant was perilously near the borderline, he had not overstepped it and they dismissed the case. The prosecutor appealed.

Held, that, on the facts the court could not say that there was no evidence on which the justices could come to the conclusion which they did; the case was purely a question of fact for the justices and the appeal would be dismissed. [J. D. P.]

COMMENTARY. The Licensing Act, 1953, provides that where the permitted hours in any licensed premises are increased under section 104, during that hour: "(4) (*a*) intoxicating liquor shall be sold or supplied only for consumption at a meal supplied at the same time in such part of the premises as is usually set apart for the service of meals, (*b*) no person shall consume or be permitted to consume any intoxicating liquor on the premises except at such a meal."

See Stone, 86th ed., 1207; Stroud's *Judicial Dictionary*, 3rd ed., Vol. 3, 1765.

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[5] For the prosecutor: *Paul Wrightson* (instructed by the Solicitor, Metropolitan Police). For the defendant: *Richard Elwes Q.C.*, *Sidney Lamb* (instructed by J. E. Lickfold & Sons).

Local Government—*Proceedings by.* See OBERST *v.* COOMBS, p. 255, below.

London—*Metropolitan police.* See HAMSHERE *v.* BOWER, p. 251, below.

Magistrates' Courts—*Appeal—case stated—preparation*

COWLISHAW *v.* CHALKLEY[6] (Q.B., Divisional Court: Lord Goddard C.J., Cassels and Streatfeild JJ.: January 20, 1955) ([1955] 1 W.L.R. 101; [1955] 1 All E.R. 367n.).

Justices, having dismissed an information under the Road Traffic Act, 1930, for dangerous driving, stated a case in which they set out contentions alleged to have been made by the prosecutor and the defendant. On the appeal, the Divisional Court were informed that in fact no contentions had been made on either side, but that, after evidence for the prosecution had been given and the defendant had gone into the witness-box and taken the oath, the justices said that they wished to hear no more of the case and that no case had been made out.

Held, that the case was improperly stated and it should go back for a rehearing before different justices.

Per Lord Goddard C.J.: It is by far the better practice that, where justices agree to state a case, it should be submitted to both sides and in case of any complication it should be left to the parties themselves to draft the case and submit it to the justices for their consideration. [J. D. P.]

COMMENTARY. See Stone, 86th ed., 99–104, and particularly note (*k*) on p. 101.

Maintenance—*Common interest—action to restrain pollution of fishery—plaintiff's acceptance of indemnity for costs*

MARTELL *v.* CONSETT IRON CO.[7] (Court of Appeal: Jenkins and Hodson L.JJ. and Vaisey J.: February 3, 1955) ([1955] 2 W.L.R. 463; [1955] 1 All E.R. 481).

The riparian owner and trustees of an angling club claimed an injunction to restrain the defendants' iron works from polluting the water of their fishery. They were indemnified for their costs by an association whose objects included the protection of the interests of anglers and the prevention of pollution. By a summons the defendants sought a stay of proceedings on the ground that the action was being illegally maintained by the association.

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[6] For the prosecutor: *Paul Wrightson* (instructed by the Solicitor, Metropolitan Police). For the defendant: *C. G. L. Du Cann* (instructed by Pierron & Morley).

[7] For the defendants: *Sir Andrew Clark Q.C., Kenneth Elphinstone* (instructed by Allen & Overy). For the plaintiffs: *Charles Russell Q.C., G. H. Newsom* (instructed by Gerrish & Co.).

Held, affirming the decision of Danckwerts J. [1955] Crim.L.R. 41, and distinguishing *Alabaster* v. *Harness* [1895] 1 Q.B. 339 and *Oram* v. *Hutt* [1914] 1 Ch. 98, the defendants had failed to show that the association had not a sufficient interest in the action to justify them in giving financial support to the plaintiffs in the prosecution of it without thereby committing the crime of illegal maintenance. In any event, it was doubtful whether the procedure by way of ordering a stay of proceedings was appropriate, for the procedure involved the trial of the question whether the alleged maintainer was guilty of a crime in the absence of the accused. [J. D. P.]

COMMENTARY. In *Alabaster* v. *Harness* it was held that Harness, who was interested in the sale of certain electrical appliances, had no common interest in an action for libel brought by an expert who had favourably reported on them against persons who had criticised the report. In *Oram* v. *Hutt* it was held that a trade union official had no common interest in a slander action brought by one of its officers, although the officer was slandered by way of his office as well as personally.

See Archbold, 33rd ed., 1267.

Obscene Publications—*Publication by limited company—whether knowledge of sole director as to contents of book an essential ingredient of offence*

R. *v*. LOVE [8] (Court of Criminal Appeal: Lord Goddard C.J., Ormerod and Gorman JJ.: February 14, 1955) (*The Times*, February 15, 1955).

L. was convicted on two counts, the first of conspiring to publish obscene libels in the form of obscene books, and the second of selling, uttering and publishing two obscene libels. In evidence at the trial L. said that he personally had nothing to do with the printing of the books, but said that he was willing to take full responsibility. L. was the sole director of the limited company which had printed the books. The learned recorder in summing up to the jury said: " In his (L.'s) evidence he really has disposed of the whole question, because, being the sole director of the company, he is the company; he almost inevitably takes responsibility for what was done. That is what he has said. He takes full responsibility. That, I think, answers the question." L. appealed on the ground, *inter alia*, that the question whether L. knew that the contents of the books were obscene was an essential ingredient of the offences and should have been left to the jury.

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[8] For the appellant: *Montague Waters* (instructed by H. W. and S. Patey). For the Crown: *E. J. P. Cussen* (instructed by the Director of Public Prosecutions).

Held, allowing the appeal, that the court was bound by *R.* v. *Allison* (1888) 59 L.T. 933. In that case, which involved the conviction of the directors of a company who had printed a libel, the Court of Crown Cases Reserved emphasised that there was no evidence that the directors knew the contents of the magazine. The direction given by the recorder could not be upheld and the conviction would accordingly be quashed. [H. P.]

COMMENTARY. See Archbold, 33rd ed., 1398.

Police—*Power to stop suspicious persons*

HAMSHERE *v.* BOWER [9] (Queen's Bench Division: Streatfeild J.: February 9, 1955) (*The Times,* February 10, 1955).

At about 7.30 on a Sunday morning, H., who wore a beard and was dressed in a pair of corduroy trousers and a rather dirty mackintosh, was seen by a police constable standing at the end of Earls Court Road and looking up and down. The officer thought that H. had seen him coming and had immediately turned out of sight and disappeared rather rapidly down the street. The officer had been told that there had been a number of cases of stealing from cars in the area and his suspicions were aroused. He therefore asked H. for his name and address, where he was going and what he had in a haversack that he was carrying. In fact, on the morning in question H. was going about his lawful business on his way to a house to do some gardening. H. brought an action against the police claiming that he was unlawfully stopped and that his reputation for honesty had been injured.

Held, that bearing in mind the provisions of section 66 of the Metropolitan Police Act, 1839, the police officer was not only within his rights, but was doing nothing short of his duty in the particular circumstances. [J. D. P.]

COMMENTARY. The Metropolitan Police Act, 1839, s. 66, provides: ". . . every . . . constable may also stop, search and detain . . . any person who may be reasonably suspected of having or conveying in any manner any thing stolen or unlawfully obtained."

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[9] The plaintiff appeared in person. For the police: *William Stabb* (instructed by the Solicitor, Metropolitan Police).

Police—*Prosecution by police on behalf of local government authority.* See OBERST *v.* COOMBS, p. 255, below.

Public Health—*By-law prohibiting keeping of noisy animals—validity*

MORRISSEY *v.* GALER [10] (Q.B., Divisional Court: Lord Goddard C.J., Cassels and Streatfeild JJ.: January 20, 1955) ([1955] 1 W.L.R. 110; [1955] 1 All E.R. 380).

An information was preferred by G. against M. alleging that M. unlawfully kept noisy animals, namely greyhounds, contrary to a Kent County Council by-law which provided: "No person shall keep within any house, building or premises any noisy animal which shall be or cause a serious nuisance to residents in the neighbourhood." On appeal by M. from conviction by justices, quarter sessions quashed the conviction on the ground that the by-law dealt with the same subject-matter as section 92 of the Public Health Act, 1936, which made it a "statutory nuisance" to keep any animal in such a place or manner as to be prejudicial to health or a nuisance. On appeal by the local authority:—

Held, that whereas the by-law dealt with noisy animals, section 92 was concerned with the conditions under which animals were kept, for example, pigs being kept so near to houses as to cause a nuisance from effluvia or where animals are kept in such a manner or place that a nuisance arises, but the section did not deal with noisy animals and, therefore the by-law was not *ultra vires.* [J. D. P.]

COMMENTARY. See Stone, 86th ed., 1838.

Quarter Sessions—*Appeal—case stated.* See COWLISHAW *v.* CHALKLEY, p. 249, above.

Road Traffic—*Speed limit—goods vehicle—meaning of goods*

POLICE *v.* DORMER [11] (North Walsham Magistrates' Court: F. J. S. Davey, Esq., Chairman: January 31, 1955).

The defendant was charged with having unlawfully driven a Bedford 15-cwt. van at a speed greater than 30 m.p.h. Evidence was given by a traffic patrol policeman that he checked the speed of the defendant's vehicle over a distance of one mile and found it to be between 45 and 50 m.p.h. On stopping the defendant he found the van to be carrying two boxes—one a chest complete with tools and the other an electrical testing transformer box. The defendant told the patrolman that he "was not carrying goods." The defendant pleaded not guilty and gave evidence to the effect that he was an electrical engineer; that the two cases contained respectively his tools and equipment for testing transformers; they were light enough to be portable; and that he always carried the said boxes for the purpose of his work as an electrical engineer and used them purely for testing electrical apparatus. They were not goods for customers nor were they used in connection with the running of the van.

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[10] For the local authority: *A. Melford Stevenson Q.C., B. R. Clapham* (instructed by Sharpe, Pritchard & Co., for R. P. Tunstall, Maidstone). For the respondent: *H. Conolly Gage* (instructed by Monckton, Son & Collis, Maidstone).

[11] For the defendant: Alan Eades, Solicitor.

Held, the defendant was not carrying goods within the meaning of the Road Traffic Acts and the case was dismissed.

[Reported by F. R. Bell, *Clerk to the Justices.*]

COMMENTARY. In *Clarke* v. *Cherry* [1953] 1 W.L.R. 268, a window cleaner was charged with using a goods vehicle for the carriage of goods without having the necessary licence and the Divisional Court held that his buckets, washing cloths and ladders were "goods" within the meaning of the Road and Rail Traffic Act, 1933. Section 36 (1) of that Act provides: "Goods includes goods or burden of any description."

Sentence—*Conditional discharge.* See R. *v.* GLAMORGAN JUSTICES, *ex p.* BARRY DOCK CORONATION WORKING MEN'S CLUB AND INSTITUTE, p. 246, above.

Sentence—*Imprisonment and fine—maximum sentence of imprisonment—further imprisonment in default of payment of fine*

R. *v.* CARVER [12] (Court of Criminal Appeal: Lord Goddard C.J., Cassels and Gorman JJ.: January 31, 1955) ([1955] 1 W.L.R. 181; [1955] 1 All E.R. 413).

C. was convicted under section 13 of the Criminal Law Amendment Act, 1885, of permitting premises to be used as a brothel. She was sentenced to the maximum term of imprisonment of six months and a fine of £200. In default of payment of the fine, the court imposed a further term of six months' imprisonment. She appealed on the ground that, since the maximum sentence of imprisonment allowed by law had been imposed, the court had no power to impose a further sentence in default of payment of the fine.

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[12] For the appellant: *Peter Bruce* (instructed by Alfred Bieber & Bieber). For the Crown: *Michael Corkrey* (instructed by P. W. Tice).

Held, dismissing the appeal, that having regard to the provisions of section 14 of the Criminal Justice Act, 1948, the trial court were entitled to make the order which was made. Section 14 of the Act applies to any fine and is not limited to cases where a fine but no sentence of imprisonment is imposed. [H. P.]

COMMENTARY. The Criminal Justice Act, 1948, s. 14, provides: " Where a fine is imposed by . . . a court of assize or quarter sessions, an order may be made . . . (c) fixing a term of imprisonment which the person liable to make the payment is to undergo if any sum which he is liable to pay is not duly paid or recovered."

See Archbold, 33rd ed., 234.

Sentence—*Preventive detention—notice of intention to prove previous convictions—proof of service*

R. *v*. HOPE [13] (Court of Criminal Appeal: Lord Goddard C.J., Ormerod and Gorman JJ.: February 14, 1955).

L. was sentenced to ten years' preventive detention. The police officer who had served the notice of previous convictions on L. was ill and unable to attend the court. Before sentence L. was asked if he admitted the previous convictions qualifying him for preventive detention, which he did. He was also asked whether it was his signature on the form of receipt in respect of the notice of intention to prove those previous convictions. L. denied that it was his signature. The learned recorder then compared this signature with L.'s signature on his application for legal aid and expressed himself satisfied that both signatures were those of L. On appeal against his sentence L. contended that receipt of the notice had not been properly proved.

Held, dismissing the appeal, that there must be some evidence of the service of the notice of intention to prove previous convictions before the prisoner can be sentenced to preventive detention. The question is not one which falls to be decided by a jury. Here, the trial judge had before him a document admitting receipt of the notice and was satisfied that that document was signed by L. The court was satisfied that the necessary preliminaries provided by section 23 of the Criminal Justice Act, 1948, had been fulfilled. [H. P.]

COMMENTARY. See Archbold, 33rd ed., 1531–3.

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[13] For the appellant: *Henry Palmer* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *R. V. Cusack* (instructed by H. D. Keith Scott).

Sunday—*Entertainment in contravention of licence—taking of proceedings*

OBERST *v.* COOMBS [14] (Q.B., Divisional Court: Lord Goddard C.J., Ormerod and Gorman JJ.: March 3, 1955) (*The Times*, March 4, 1955).

The appellant was the licensee of a public house for which he held a music and singing licence granted under section 51 of the Public Health Acts Amendment Act, 1890. On Sunday, February 21, 1954, between 8 p.m. and 10 p.m. in the saloon bar of the public house entertainment was provided for members of the public by professional entertainers. The appellant and members of his staff were wearing false moustaches and side whiskers and their faces were made up. One of the entertainers, dressed as a clergyman, related, with gestures, anecdotes and sang a song entitled "Just a Simple Country Parson." The appellant was charged on an information laid by a chief inspector of police of committing a breach of the conditions on which the licence was granted in that he allowed public music and singing not appropriate to the day contrary to section 51 (9) of the Act. It was contended on the appellant's behalf that only the local authority and not the police had power to prosecute under the section. The justices being of the opinion that the police had authority to prosecute and that the music was not appropriate to the day found the charge proved and fined the appellant £5. He appealed.

Held, allowing the appeal, and applying *Kyle* v. *Barbor* (1888) 58 L.T. 229, prosecutions under section 51 could be brought only by the local authority and, by virtue of section 277 of the Local Government Act, 1933, this duty should have been delegated to a member or officer of the council and not to the police. [J. D. P.]

COMMENTARY. In *Kyle* v. *Barbor* a local board purported by resolution to delegate its power to prosecute for certain offences to the superintendent and sergeants of the county police. Acting under this resolution the police prosecuted Kyle for contravention of a local Act and he was convicted. The conviction was quashed because the local board had no power so to delegate its power to prosecute.

See Stone, 86th ed., 1630–33.

Vagrancy — *Fortune-telling — medium exercising psychometric powers*

DOHENY *v.* ENGLAND [15] (Salford Magistrates' Court: Leslie Walsh, Esq., Stipendiary Magistrate: February 17, 18, 1955).

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[14] For the appellant: *N. J. L. Brodrick* (instructed by Amphlett & Co. for Donnelly & Elliott, Gosport). For the respondent: *E. S. Fay* (instructed by Hunt & Hunt for Kingswell & Berney, Gosport).

[15] For the prosecution: H T. Heap, Town Clerk's Office, Salford. For the defence: *F. P. R. Hinchcliffe* (instructed by James J. Rothwell, Salford).

The defendant was charged with three offences under section 4 of the Vagrancy Act, 1824, of pretending to tell fortunes to deceive and impose. Evidence was given that at a spiritualist church where the defendant was minister, a psychometric service was held during which articles were handed to the defendant who gave the owners messages. He announced that at the close of the service psychometric readings would be given in an adjoining room on payment. A policewoman together with other persons, went to this room and paid the charge of five shillings. The defendant took their hands and told them such things as that they were going to cross the sea, that there would be a birth in the family and that some person was going to die of a wasting disease. The policewoman agreed that the defendant did not look at her hand or try to read the lines. He had never purported to tell her fortune and had made it clear that he was exercising his psychometric powers. For the defence it was stated that the defendant was a well-known medium who demonstrated psychometry in the exercise of mediumistic powers at a registered place of worship which was a member of a spiritualist league. He also gave demonstrations of mediumship at other spiritualist churches. Further, the proceedings, if any, should have been taken under section 1 of the Fraudulent Mediums Act, 1951.

Held that, on the evidence, the demonstration of psychometry amounting to fortune-telling and the defendant was guilty. The Fraudulent Mediums Act, 1951, was passed to protect the genuine medium in the exercise of his powers, but fortune-telling was prohibited whether it was practised by a genuine medium, a fraudulent one or anyone else.

[Reported by K. B. Edwards, *Barrister-at-Law*.]

COMMENTARY. The Fraudulent Mediums Act, 1951, makes it an offence with intent to deceive to purport to act as a spiritualistic medium or to exercise any powers of telepathy, clairvoyance or similar powers or to use any fraudulent device while purporting to exercise any such powers. It repeals section 4 of the Vagrancy Act, 1824, so far as it extends to persons purporting to exercise such powers.

Psychometry is a faculty of divining from physical contact or proximity the qualities of an object or of the persons who have been in contact with it.

See Stone, 86th ed., 986, 2361.

Acts and Orders

Animals

PROHIBITION OF LANDING OF SWINE FROM THE CHANNEL ISLANDS (REVOCATION) ORDER, 1955 (S.I. No. 289): operative March 1, 1955. The Order of 1954 (S.I. 1954, No. 721; see [1954] Crim.L.R. 635) is revoked.

TUBERCULOSIS (ERADICATION AREA) ORDERS, 1955: ARGYLL AND HEBRIDES (S.I. No. 284); NORTH-WEST ENGLAND (S.I. No. 285); FORTH (S.I. No. 286); MID-WALES (S.I. No. 287): all operative March 1, 1955. A number of areas are declared to be eradication areas for purposes connected with the control of tuberculosis and are made subject to the Tuberculosis (Area Eradication) Order, 1950 (S.I. No. 2006).

Approved Schools

See APPROVED SCHOOLS (CONTRIBUTIONS BY LOCAL AUTHORITIES) REGULATIONS, below.

Children and Young Persons

APPROVED SCHOOLS (CONTRIBUTIONS BY LOCAL AUTHORITIES) REGULATIONS, 1955 (S.I. No. 253): operative April 1, 1955. The contribution to be made by the local authority named in an approved school order to the expenses of the managers of the school during the time that the person named in the order is under their care is increased to 80s. 6d. a week. The Regulations of 1954 (S.I. No. 126; [1954] Crim.L.R. 312) are revoked.

See EMPLOYMENT OF YOUNG PERSONS (GLASS CONTAINERS) REGULATIONS, p. 258, below.

Defence Regulations

DEFENCE REGULATIONS (No. 1) ORDER, 1955 (S.I. No. 295): operative February 24, 1955. Regulation 55 (1) of the Defence (General) Regulations, 1939, is extended and orders may be made for regulating or prohibiting the disposal, acquisition or possession of articles of any description under hire-purchase or credit sale agreements. The powers conferred by regulation 55AA, which relates to the keeping of books, making of returns, entry and inspection, may be exercised in relation to any undertaking concerned with the disposal of articles of any description in respect of which such an order is in force.

Factories

EMPLOYMENT OF YOUNG PERSONS (GLASS CONTAINERS) REGULATIONS, 1955 (S.I. No. 274): operative March 1, 1955. In factories in which glass bottles or jars are manufactured by automatic or semi-automatic machines, male young persons over sixteen years of age may be employed in consecutive weeks between twelve midnight and six o'clock in the morning provided they are not employed during those hours on more than twelve days in any period of twenty-eight consecutive days. Section 81 (2) (*c*) of the Factories Act, 1937, is amended accordingly.

Food and Drugs

BREAD (AMENDMENT) ORDER, 1955 (S.I. No. 221): operative February 20, 1955. The Order of 1953 (S.I. No. 1283) is extended, provision being made for the production of national milk bread containing a prescribed minimum of skim milk powder. An extra charge may be made above the appropriate maximum retail price for the additional cost of ingredients.

For penalties for infringements, see regulation 92 of the Defence (General) Regulations, 1939.

Hire-Purchase

HIRE-PURCHASE AND CREDIT SALE AGREEMENTS (CONTROL) ORDER, 1955 (S.I. No. 297): operative February 25, 1955. Hire-purchase or credit sale agreements entered into after February 24, 1955, in relation to goods specified in the First Schedule to the Order, must comply with the following requirements: (1) the agreement must be in writing and comprise only goods to which the Order applies; (2) it must contain a statement of the cash price of the goods, and any amount payable by instalments under the agreement for the installation or maintenance of the goods; (3) it must state that before the signing of the agreement actual payment was made in respect of each description of goods comprised in the agreement of the percentage of the cash price of the goods and any amount payable for their installation or maintenance specified in the First Schedule; (4) the agreement must provide for the payment of the balance due in respect of each description of goods either by approximately equal instalments at equal intervals over a period not exceeding that specified in the First

Schedule for that description of goods, or in the case of a hire-purchase agreement by one payment to be made within three months.

Hire-purchase agreement includes an agreement under which ownership will or may pass on the occurrence of any event whether that event is an act of the parties or not.

For penalties for infringements, see regulation 92 of the Defence (General) Regulations, 1939.

See also DEFENCE REGULATIONS (NO. 1) ORDER, p. 257, above.

London

The following Orders have been made detailing prescribed routes: S.I. 1955, Nos. 259 (Lambeth); 260 (Wandsworth).

The following Order has been made prohibiting the use of a road by mechanically propelled vehicles: S.I. 1955, No. 265 (Welwyn Garden City).

The following Order has been made amending the Parking Regulations of 1950 (S.I. No. 1571): S.I. 1955, No. 304.

The following Order has been made concerning St. James's Park and Green Park: S.I. 1955, No. 266.

Merchant Shipping

MERCHANT SHIPPING ACT, 1954, ORDERS, CHANNEL ISLANDS (S.I. No. 238); ISLE OF MAN (S.I. No. 239): both operative March 8, 1955. The provisions of the Merchant Shipping Act, 1954, are extended to Jersey, Guernsey and the Isle of Man.

Pest Control

IMPORTATION OF POTATOES AND VEGETABLES ORDER, 1955 (S.I. No. 277): operative February 27, 1955. The restrictions on the importation of potatoes and vegetables imposed by the Importation of Plants Order, 1955 (S.I. No. 81; see [1955] Crim.L.R. 196), are modified in respect of new potatoes from France, Portugal and Spain, and other vegetables from certain districts in Belgium and France and from the Netherlands during the periods specified in the Order.

Scotland

Animals

See TUBERCULOSIS (ERADICATION AREA) ORDERS, p. 257, above.

Sea fisheries

SEA FISHERIES (SCOTLAND) BY-LAWS, 1955, No. 50 (S.I. No. 233); No. 52 (S.I. No. 271): both operative February 16, 1955.

Subject to prescribed conditions it is made lawful to use a seine net or a flounder net with a bag to catch white fish in part of the Firth of Forth, and to use a seine net to catch such fish lying within the exclusive fishery limits around the Shetland Islands.

For penalties for contravention of the by-laws, see section 4 of the Sea Fisheries (Scotland) Amendment Act, 1885.

Sea Fisheries

See SEA FISHERIES (SCOTLAND) BY-LAWS, p. 259, above.

Wireless Telegraphy

WIRELESS TELEGRAPHY (CONTROL OF INTERFERENCE) REGULATIONS, 1955, ELECTRIC MOTORS (S.I. No. 291); REFRIGERATORS (S.I. No. 292): both operative September 1, 1955. Requirements are prescribed which are to be complied with by users of certain electric motors, generators, converters and refrigerators so that they will not cause undue interference with wireless telegraphy. It is not unlawful to use an apparatus which does not comply with these regulations, but if they are not complied with the Postmaster-General may serve a notice prohibiting or restricting the use, sale or hire of the apparatus concerned. Contravention of such a notice is an offence under the Wireless Telegraphy Act, 1949; for penalties, see section 14 of the Act.

Letters to the Editor

Arrest for Breach of the Peace

Sir,

Whilst reading an article by Glanville Williams on "Arrest for Breach of the Peace" I was surprised to read his statement at [1954] Crim. L.R. 591 under the sub-heading "Measures Short of Arrest to Protect Property" commencing at "Hence if I find a man with a hammer in the daytime, etc.," where he says even a police constable cannot arrest him without a warrant, except under local powers. I challenge this as being very misleading and untrue. A statutory power of arrest is given under the Malicious Damage Act, 1861, to enable a constable to arrest without warrant any person found committing any offence against the Act, this particular set of circumstances presumably falling under section 51.

Yours faithfully,

HENRY C. S. LODGE.

Chantmarle, Dorset.

[Professor Glanville Williams writes: "I am grateful for this correction. Section 61 of the Act of 1861 confers the power of arrest upon any peace officer, or the owner of the property injured, or his servant, or any person authorised by him. It therefore covers the police constable, though not an ordinary citizen who is a stranger to the owner of the property."]

Trials of a Colonial Beak

Sir,

I am directed to draw your attention to a mis-statement which occurs in the course of an article entitled "Trials of a Colonial Beak," by Oliver Shaw, published in the February, 1955, issue of the *Criminal Law Review*. The mis-statement occurs at page 101 of that issue, where it is stated "it is to be noted that trial by jury does not exist at all in the Gold Coast." In fact, trial by jury has existed for many years in the Gold Coast Colony, the offences triable by jury at the present time being those punishable by death or by imprisonment for life. The relevant provisions of the law are sections 254 *et seq.* of the Gold Coast Criminal Procedure Code (Cap. 10 of the 1951 Revised Edition of Gold Coast Ordinances) and the Trial by Jury Order, 1948 (No. 41 of 1948). It would be appreciated if a correction could be published in due course.

I have the honour to be, Sir,

Your obedient servant,
A. G. FORBES,
Solicitor-General.

Accra.

Advocacy at Petty Sessions—Committal Proceedings

Sir,

Mr. B. Fraser Harrison's articles on Advocacy at Petty Sessions have already provoked the Chief Clerk to the Bow Street Magistrates' Court to take him to task.

I am afraid that his article in your issue for March, 1955, is also open to exception in his exposition on "Committal Proceedings."

On p. 155 he says: "The prosecutor, if the case is complicated, makes a brief opening speech and then calls his witnesses." It is improper for a prosecutor to make any kind of an opening speech unless he is represented by counsel or solicitor.

Lower on the same page we find: "The prosecutor is permitted to lead to a degree that would not be tolerated elsewhere, and other rules of evidence are waived." It was held in *R.* v. *Walker* [1950] 2 All E.R. 911 that "the practice of obtaining evidence by asking leading questions was undesirable, the fact that it had been followed (in that case) did not invalidate the committal." This is surely sufficient authority to make the careful advocate avoid it. As to the statement that other rules of evidence are waived, I think that any prosecutor who would "try this on" would be asking for a rebuke from the Bench.

On pp. 156 and 157 he deals with the inadvisability of disclosing the defence at the examination. I suggest that he should direct his attention to Stone's *Justices' Manual*, 86th ed., vol. 2, p. 2576, note (*q*). In very many cases the disclosure of the defence at the examination is in the interests of the prisoner, and many may deplore the attitude of mind which seems to imply that an advocate should endeavour to treat a criminal prosecution as an exercise in putting one over on the opposition rather than in assisting the court to arrive at the proper decision.

Yours faithfully,
F. G. HAILS,
Clerk to the Justices.

Dartford, Kent.

Advocacy at Petty Sessions—Summary Trial and Committal Proceedings

Sir,

Might I make one or two observations on the second article [1955] Crim.L.R., pp. 88–93, of the interesting series by Mr. B. Fraser Harrison, entitled " Advocacy at Petty Sessions "?

Mr. Harrison states (p. 88) that " there is no direction in section 18 of the M.C.A., 1952, as to what they (the magistrates) must take into consideration when deciding " whether it is advisable to try the information summarily. Yet, according to section 18 (3), regard must be had " to the nature of the case."

With reference to the privilege bestowed on the Director of Public Prosecutions (p. 89) by section 18 (3) of the M.C.A., 1952, it is relevant to note that section 283 (3) of the Customs and Excise Act, 1952, confers a similar privilege on the Commissioners of Customs and Excise.

Dealing with the procedure under section 18, Mr. Harrison states: " When the magistrates decide to cease the committal proceedings and to try the case summarily the charge is written down and read to the accused before he is asked to plead " (p. 89). With respect, this is not strictly accurate. First, the magistrates cannot decide to cease the committal proceedings (except under section 7), nor does it lie with them to decide to try the case summarily; all they might do, if they deemed it proper, is to discontinue the committal proceedings and proceed with a view to summary trial. Secondly—in compliance with section 25 (5), which lays down the procedure to be followed under section 18—before he is asked to plead, the accused must be asked whether he wishes to be tried by a jury and (if the offence is triable at quarter sessions) the magistrates' powers under section 29 must be explained to him. These provisions are obviously calculated to make of magistrates arbitrators of the accused's own choosing—a fact upon which, I think, the popularity of the summary jurisdiction largely depends.

Lastly, I confess my inability to find Mr. Harrison's authority for saying (p. 91): " Should the magistrates decide to try the accused summarily he is asked if he consents to being tried only if: (*a*) . . . *and if* (*b*) he has attained the age of sixteen *and* the offence is one that is punishable on summary conviction with imprisonment *and* he has been told of the provisions of section 28 of the M.C.A., 1952."

Yours faithfully,
JOSEPH YAHUDA,
Barrister-at-Law.

Temple.

Books and Periodicals

Reviews:

The Roots of Crime. Edited by the late Sir Norwood East, M.D., F.R.C.P. London: Butterworth & Co. (Publishers), Ltd. 1954. ix and 173 and (index) 8 pp. (30s. net.)

This book consists of six chapters of very similar length written by four members of the medical profession, a magistrate and a probation officer. The views expressed are mainly those of the psychiatrist and the doctor which is to be expected in a book so entitled. However, the foreword by the former Home Secretary, the Rt. Hon. Sir David Maxwell Fyfe, makes it reasonably clear that the intention is not only to consider causes but something more general, namely, " the contribution which medicine can make to the study and prevention of crime and to the reformation of the offenders." It certainly makes it difficult for Mr. W. Clifford to write on the rôle of probation in this context. Mr. Frank Powell in the chapter on the Magistrate and the Psychiatrist does not put a very strong case for the lawyer, though it is hard to see how his contribution was intended to fit into the general scheme of the book.

Undoubtedly the most interesting contribution is that of Dr. John C. Mackwood who writes on Remedial and Educational Psychotherapy during Penal Detention. The title of the chapter is intimidating but, whatever reaction the reader has to the views expressed, this is a stimulating description of therapeutic methods actually employed in a prison community. His main approach is analytical psychotherapy aided by psychiatric techniques such as narco-therapy and electro-convulsant treatment. The centre-piece of the chapter is the description of Group Treatment which Dr. Mackwood has carried out at Wormwood Scrubs alongside individual treatment of selected prisoners. The psychologically treated offenders are recognised as sick persons and a ward exists for them within the hospital grounds. This forestalls the difficulty which always occurs in penal institutions, whether they be approved schools or prisons, namely, that the patient is regarded as odd by the inmates who are not being treated. The description of the treatment is all too short, though reference is made to work of this nature carried out by Dr. S. H. Foulkes amongst outpatients in civilian hospitals and in the Army at Northfields Emergency Hospital, Birmingham. Unfortunately the bibliography gives no further help by reference, for example, to the book written by Dr. Foulkes nor to the work of Dr. Maxwell Jones which is presumably similar in technique. However, it must be admitted that occasionally Dr. Mackwood becomes obscure, at least to the layman; for example, he writes (p. 108), homosexuality is " often far more of an anomaly than perversion, and is a bigger sociological rather than a social problem." Again, he uses that doubtful phrase " scientific research " (p. 116): " Sociology is concerned with all aspects as a scientific research into the phenomena of social relations and the principles or laws of social organisation; . . . We need more sociological research inside prisons."

Dr. Peter Scott in the chapter entitled "A Clinical Contribution" propounds an interesting theory on the spiv. Unfortunately, like Mr. Frank Powell, he throws no light on the lawyer's problem to which psychiatry in the criminal courts gives rise. Is the judge to be the captive of the psychiatrist and accept uncritically the latter's diagnosis? Of course this problem only arises as a rule in relation to treatment. Dr. Scott considers aspects of punishment and touches upon some of the theories which have been evolved concerning it; but he is a psychiatrist and naturally his interest lies in the usefulness of psychiatry. The lawyer and the layman, who are not prepared to accept unquestioningly the psychiatrist's views, will not be helped. Sir Norwood East mentions the old jurisdiction of the ecclesiastical courts. These latter courts concerned themselves to an ever-decreasing extent, until the middle of the last century, with crimes of an "immoral" nature. It would seem to be a matter of relevance to the psychiatrists that this jurisdiction once again perhaps should be vested in special tribunals. There is no suggestion in the book of treatment tribunals, family courts or of youth authorities, now used in a number of states in the U.S.A.

The remaining chapters are matter of fact but inclined to take a pedestrian approach generally covered by textbooks.

T. E. JAMES.

Are You Guilty? An introduction to the Administration of Criminal Justice in the United States. By William Dienstein. Illinois, U.S.A. Oxford: Blackwell Scientific Publications, Ltd. 1954. xiv and 155 and (appendix) 17, (bibliography) 8 and (index) 4 pp. (32s. 6d.)

Criminologists in this country rarely write for a mass audience. Their works, heavy with statistics, are generally written for a comparatively small number of interested professional workers. The task of enlightening the public is often left to crime reporters and ex-convicts, whose writings sometimes show a lack of objectivity and science. In this American book, written in a cosy simple style, the author, an Associate Professor of Criminology at Fresno State College, seeks to introduce the public at large to certain aspects of crime, its prevention, detection and treatment, and the various bodies that are concerned with it. His main theme is that a community gets the judges, lawyers, legislators, and policemen that it deserves, and the picture he draws is often most unpleasant. He describes the political and social factors that influence the behaviour of all those involved in the administration of criminal justice, against the background of a celebrated American murder case in which twelve young boys were convicted of murder, and whose convictions were subsequently quashed by an Appellate Court. Incidents from this case are used to illustrate particular points in the text. Readers unacquainted with the American phenomenon of "trial by city desk" will read with almost horror the newspaper pre-trial headlines contained in the appendix referring to this case. They will similarly be surprised to read that in California, a State with one of the most progressive penal systems, 68 per cent. of the jails investigated (these are not prisons but local jails or lock ups, either merely custodial and holding prisoners awaiting trial or bail, or containing short sentence prisoners) were rated poor or worse, 19 per cent. fair, and only 13 per cent. rated as good or very good! Apart from a rather confused chapter on prisons, those on probation, parole, juries, judges, the police, jails and many other topics make easy, digestible reading, and contain many modern theories of penology and crime prevention offered in a comprehensible fashion to the layman. No one should be deterred by the publisher's blurb on the cover which contains the naive statement, "legislators, judges, attorneys, police—do not corrupt themselves. They are made corrupt by people who are willing to buy for themselves special privileges or immunity from the law" a somewhat subtle distinction. English readers will find this book an interesting glance into this aspect of American domestic life. It should be read by all criminologists, not so much for what it says but for what it sets out to do.

REX B. COWAN.

Calling Scotland Yard. By Chief Superintendent Arthur Thorp. London: Allan Wingate (Publishers), Ltd. 1954. 220 pp. (no index). (12s. 6d. net.)

This book is more than a mere casebook and yet less than a biography. Many of Chief Superintendent Thorp's best known cases are, as one would expect, dealt with in bare detail, and these include the cases of James Hynes ("the Green-eyed Gunman"), Mrs. Mary Jane Cole ("the Coventry Cyanide Case"), Walter Rowley and the unsolved "Passion Wagon Murder," as well as cases of blackmail, theft, arson and fraud. Here, for the reader with a palate for crime, are many detective stories collected in one volume, all of which have the merit of being true. But, between descriptions of cases, we are allowed a glimpse of the policeman's real life; the comradeship, the long hours of work, the sense of humour and the courage which are some of the necessary qualities; and there emerges a picture of Chief Superintendent Thorp himself as a conscientious, thorough and hard-working officer. It is good to find that it is thought worth while to tell the story of the small girl who, arriving at a police station with a policeman's helmet, says: "Gent wot owns this is lying in our garden." Fortunately, nothing worse than drunkenness had befallen the owner. Later Thorp tells how, after hearing that some of the so-called toughs of the West End had sworn to "get him," he walked alone into their club in Soho. There was an immediate and tense silence when he entered, broken by Thorp saying: "Good evening; I believe you boys are looking for me. What can I do for you?" No one spoke or moved so, after standing there for a minute or two, he turned and walked out. It is perhaps in the description of such incidents that the real value of the book lies. Many people will find much to interest them in this book which, besides the descriptions of actual cases, shows something of the police officer's attitude to his job. In particular, young men thinking of joining the Metropolitan Police Force might do well to read it. Those with a disinclination to work hard during long hours might be discouraged from pursuing a career which is so obviously arduous but, perhaps, more would be encouraged by the example of Chief Superintendent Arthur Thorp who, starting at the humble rank of police constable, ended his distinguished career in the inner sanctums of Scotland Yard.

H. P.

The Journal of Forensic Medicine. Volume 1, Nos. 4, 5 and 6. Edited by H. A. Shapiro, PH.D., M.B., F.R.S.S.AF. Capetown: Juta & Co., Ltd. 1954. (12s. 6d. net; annual subscription, £2 2s.)

Number 4 is devoted almost entirely to a survey of the modern conceptions of insanity in relation to the law. A series of articles by experts in this subject emphasise the different viewpoints of the legal and medical professions, the former being primarily concerned with the impact of the accused person upon the community as a whole, whereas the doctor has a special duty to the welfare of the patient. These different approaches will necessarily modify the opinion of witnesses in any given set of circumstances and these articles serve to explain the attitude of the psychiatrists, who are still dealing with an inexact science and relating their views to that of the law. Whatever the criticism of the McNaghten Rules may be they would appear to be still of fundamental value. The article on mental reactions following injury shows the value of knowledge of previous mental instability and the suggestive effect of desire for compensation. In another article this is extended into the particular field of the effects of stress on the adrenal hormone secretion. There are two technical articles on the polarographic determination of alcohol and the detection of spent gun powder grains.

In Number 5 breath analysis for alcohol is condemned as a useless test for intoxication. There is a comprehensive survey of the evidence gathered with much attention to detail in the Towpath Murders. The distribution of barbiturates in the body and their excretion gives much useful data. The legal side of forensic medicine is represented by an article on medical negligence and comparison made of its interpretation in South Africa and the United Kingdom where proof of a much more serious offence is needed before there can be criminal negligence. There is a description of polarography as an aid in the diagnosis of lead poisoning and a discussion of the possibilities and causes of the post-mortem production of alcohol in the body by fermenting organisms, a condition which might cast an unjustified stigma on the deceased.

Number 6 deals with a wide range of subjects including psychiatric problems of offenders against the law and an account of the methods and interpretation of the results obtained in encephalography. Alcohol again has a prominent place in an investigation of 100 cases of motor-vehicle drivers under the influence of alcohol. This includes an elaborate analysis of these cases in relation to their drinking habits, degree of intoxication and their blood and urine alcohol levels.

H. E. ARCHER.

Law and Disorders. By Sir Carleton Kemp Allen, Q.C. London: Stevens & Sons, Ltd. 1954. vii and 162 pp. (10s. 6d. net.)

Sir Carleton Kemp Allen is so well known for his brilliant attacks on the more serious failings of bureaucracy that it will be with a sense of anticipation that lawyer and layman alike will turn to this collection of light essays on legal topics, the variety of which is well illustrated by such titles as "Pity the Poor Cosh Boy" and "No More International Law.". They will not be disappointed, for the author, in humorous vein, has touched on subjects which cannot fail to be of interest to every reader.

The Crichel Down affair has shown that the author's warnings on certain trends of government were not only justified but pointed to a very real and live danger. In this collection of essays the reader will not go far before his thoughts are provoked on further failings of our modern system. One cannot help but reflect that the "Poor Cosh Boy" of the opening essay would have been more worthy to receive the attentions of the police sergeant than "the Recidivist" who follows him, and whose heinous crime was the purchase of a bloater after normal shopping hours were over. Perhaps in this case truth would be more wretched than fiction; the enforcing officer in reality would doubtless have been a Ministry Inspector!

For bedside reading or for a moment's more serious reflection this collection of "trifles" (as the author calls them) could hardly be bettered. The amusing drawings of Mr. Leslie Starke combine with these essays to make this a really delightful and entertaining volume.

F. MAURICE DRAKE

Books Received:

The Police Officer's Assistant. Seventh edition. By Frank L. Bunn, O.B.E., Barrister-at-Law. vii and 349 and (table of legal terms) 13 and (index) 25 pp. (12s. 6d.)

Articles:

Canadian Bar Review, Vol. 32.
Provocation—effect of accused's state of intoxication, p. 1023.

Police College Magazine, Vol. 3.
Out of an abundance of caution (restrictions on police powers), p. 343.
Crime prevention by legislation, p. 357.
The Sunday trading riots, p. 363.
Home and colonial (police forces), p. 370.
Evidence of similar facts, p. 375.
The law and Sunday, p. 390.

The British Journal of Delinquency, Vol. 5.
Juvenile delinquents under punitive detention, p. 191.

International Criminal Police Review, February, 1955.
International bank frauds, p. 34.
Proved guilty of attempted counterfeiting but acquitted by the jury, p. 43.
Photographic methods for deciphering erased pencil writing, p. 47.
The use of fingerprints found on the scene of a crime, p. 51.
A new method for testing for seminal stains, p. 53.

The Magistrate, Vol. 11.
Bail, p. 15.

Scots Law Times, 1955.
Vicarious liability for crime (News), p. 21.

Law Times, Vol. 219.
Murder without a body, p. 69.
Magisterial topics, p. 98.
A related juror, p. 109.

Justice of the Peace, Vol. 119.
Jumping on buses, p. 98.
Visiting forces, p. 99.
Selecting cases for probation, p. 115.
Attendance centres, p. 144.

Police Review, Vol. 63.
The wording of offences, pp. 112, 154.
The rights of informants, p. 152.

Police Chronicle.
A policeman looks at the new Traffic Act, February 18, 1955, p. 3.
The clerical error, February 25, 1955, p. 4.

THE
CRIMINAL LAW
REVIEW

Editors
JOHN BURKE and PETER ALLSOP, M.A.
Barristers-at-Law

Editorial

Preventive detention

The Court of Criminal Appeal have recently reiterated that seven years is normally to be the minimum sentence of preventive detention except in the case of aged prisoners whom one did not want to die in prison, but they did not want it thought that seven or eight years was the only sentence of preventive detention to be given in every case.

In *R.* v. *McKenzie* (February 21, 1955) the court reduced from nine years to seven years a sentence of preventive detention passed on a woman who had stolen two pairs of stockings worth 15s. 10d.; she had seventeen previous convictions for indictable offences and a large number of convictions for minor offences. A reduction of sentence from nine years to five years was made in *R.* v. *Howard* (January 31, 1955); the accused was in this case just such an old man as the court have had in mind; he was 69 and had had twenty-two previous convictions before his conviction for burglary.

Restoration of application for leave to appeal in the Courts-Martial Appeal Court

The Courts-Martial Appeal Court took the unusual course of permitting the restoration of an application for leave to appeal in *R.* v. *Warrington and McBrinn* (March 17, 1955) after the application had previously been dismissed. The main ground for the request for restoration was that one of the accused had not had an opportunity to brief counsel. The court put the case back for argument as a concession because it might appear to some that justice had not been seen to have been done.

"Good quality wool"

A defendant, Mrs. Hetty Lester, pleaded guilty at Bournemouth Magistrates' Court on February 10, 1955, to offences against the Merchandise Marks Act, 1887. A statement in an advertisement that blankets containing 22 to 27·3 per cent. wool were "good quality wool" was a false trade description. In the same case the defendant stated that sheets were described as "top quality" because they were not sub-standard or "seconds."

General aspects of criminal law

Professor Jerome Hall of the University of Indiana gave a series of lectures on aspects of the criminal law at King's College, London, at the beginning of this year. Professor Hall thinks that it would be of great potential value if the common law of crime found in England, some states of America and in certain other countries could be stated as a coherent whole. In his lectures he considered the elements of this common law and examined some of its problems.

Parliament

Criminal procedure

Several points concerning the trial of criminal offences have been raised in the Commons recently. The Home Secretary refused to send magistrates any memorandum concerning their rights and duties in respect of sittings in open court and the hearing of evidence in camera, as he considers that they are fully aware of the relevant statutory provisions (H.C. Debates, Vol. 537, col. 2234; March 3, 1955). The Attorney-General does not consider that any useful purpose would be served by setting up a committee to consider amendments in the law securing the public hearing of all criminal charges unless a public application is made for their trial in camera (Vol. 537, col. 1720; February 28, 1955); nor did he accept a suggestion that the indictments rules should be amended so as to ensure that every person committed for trial on indictment should be entitled to receive a copy of the indictment free of charge at least five days before the trial; at present the accused may request a copy of the indictment after the bill has been preferred (Vol. 538, col. *160*; March 21, 1955). The Government will not introduce legislation to enable juries in England and Wales to return the Scottish verdict of "Not proven" in appropriate cases (Vol. 537, col. 2227; March 3, 1955). Doubt was raised by one member as to the adequacy of the present arrangements for notifying those concerned of the dates of assizes, but the

Attorney-General has received no further complaints and he considers that the present practice is satisfactory (Vol. 538, col. 30; March 7, 1955).

Treason

A private member's Bill designed to amend the law relating to treason so that persons who give aid and comfort or adhere to the enemies of the United Nations shall, if the armed forces of Great Britain are operating with the United Nations, be deemed guilty of treason has been introduced in the Commons. It was introduced because of the disquiet caused by the activities of certain persons in North Korea during the Korean war, which may not be covered by the present law (Vol. 538, col. 167; March 8, 1955).

Preventive detention

A notice has been prepared which will be given to preventive detention prisoners when they enter the second stage of their sentence. It is designed to set out as clearly as possible the considerations governing selection for the third stage and consequent earlier release. Alterations will be made with the same object in the information provided on the prisoners' cell cards. In the case of preventive detention good behaviour cannot be the only criterion for the remission of sentence, although by good conduct prisoners can earn eligibility for earlier release (Vol. 537, col. 2232; March 3, 1955).

Police exemption from national service

The Government have decided that police cadets should not be called up for National Service for so long as they serve as cadets with a regular police force and subsequently as members of such a force. If such a cadet or policeman leaves the police while still under twenty-six years of age, he will become liable for National Service. Not more than 2,000 cadets will be exempted in any one year (Vol. 538, col. *176*; March 22, 1955).

Exhaust fumes from motor vehicles

The Metropolitan police try to enforce the present prohibition against the emission of unnecessary exhaust fumes from motor vehicles contained in regulation 78 of the Motor Vehicles (Construction and Use) Regulations, 1951. The circumstances are not often such as to warrant the institution of criminal proceedings and most offenders are merely given an oral warning (Vol. 538, col. *141*; March 18, 1955).

The Prosecution of the Accused[1]—English and French Legal Methods

By C. J. Hamson

Professor of Comparative Law in the University of Cambridge

On this occasion I propose to deal with the administration of the criminal law in England and in France, but necessarily only with the procedure applicable to the most serious crimes. It is a subject I approach with some reluctance: mainly because I am firmly persuaded that the English system is, in this particular, greatly superior to the French. I have previously suggested that it is desirable that a comparative lawyer should show, if possible, a partiality in favour of the foreign system: in this instance I fear that I have no such bias. It is small consolation that any criticism I may make of ✓ French criminal justice would pale into insignificance when set beside the very vehement criticisms now being made in the French press. Things are certainly not as bad as they are there represented to be; still there has recently been a number of cases—much too large a number—which do show the French system in an unfavourable light and which do suggest the existence of serious defects.

Recent cases

What are the points on which there is today an outcry in France? First the unconscionable time during which a person charged with crime is kept in jail *before* trial—remanded in custody is the more euphemistic phrase in English. It should be noted that this imprisonment—détention préventive—is *lawful* as much in England as in France; but its *duration* in France may be, and often is, inordinate by any standard. In the case of Gaston Dominici, for example, recently convicted of the murder of Sir Jack Drummond and his wife and daughter (which murder was done on August 4, 1952), the accused, having often been previously interrogated, was finally charged and arrested on November 16,

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[1] This is the text of the second of three talks given in the Third Programme of the B.B.C. on " English and French Legal Methods." The talk was first broadcast on March 2, 1955. I am much indebted for assistance to professor R. Vouin, of the University of Bordeaux, who, however, is not responsible for the opinions expressed. The first talk will be published in the *Juridical Review*.

1953; but he was actually tried only in November, 1954, and he was kept in prison for the whole year between the day of his arrest and the day of his trial. Marguerite Marty, who was charged with the murder of her cousin by administering to her an overdose of a sleeping draught and who was acquitted after a spectacular trial at Perpignan this year, was kept in prison during the whole period of the fourteen months which elapsed between the day of her arrest and the day of trial, though the circumstances of the murder with which she was charged were relatively simple, the motive alleged being that she was the mistress of her cousin's husband. The most striking case on this point is that of Marie Besnard, which is still unconcluded. This unhappy woman was charged with the murder of a number of her relations by the administration of arsenic. She was kept in jail for a period of over four years before her first trial. In spite of that delay, her case as presented to the court of trial was in such a state of confusion that that court ordered une instruction supplémentaire—a repreparation of the case—though mercifully releasing her on bail. At the retrial, which itself was delayed, the second court again ordered a further inquiry. Her case has not yet received final judgment five years after she had been charged. Her spirit as well as her health has been broken by a treatment which though lawful is unjustifiable upon any view, whether she be finally found guilty or, as is almost certain, not guilty.

The second criticism made generally in France, and recently with particular vehemence, is concerned with the manner in which confessions are procured—or the attempt is made to procure confessions—from persons suspected of crime. Criticism is especially directed against confessions obtained by the police *before* the suspect is brought in front of the juge d'instruction and formally charged, though in the case of Marie Besnard, at all events, the pressure by the police was continued after she had been formally charged. To put it bluntly, the French police are accused of behaving not only oppressively but sometimes brutally. It certainly looks as if Marguerite Marty, whom I have already mentioned, had been maltreated before she was formally charged. Neither of these women admitted the charges against herself and neither has been convicted. However, in another case finally determined this year, that of Jean Deshays, the accused had confessed to the murder of which he was accused. At his trial he retracted his confession but was convicted. Fortunately he was not executed. Four years later, for reasons which we need not examine, the Supreme Court ordered his case to be reopened. As recounted at the retrial, the circumstances under which that man came to be implicated in, and indeed minutely to confess to the details of, a murder with which it is now certain that he had nothing whatever to do were evidently discreditable to the police.

It must be interjected in passing that it is much to the credit of the French courts, and indeed of the French police, that a judicial error of the kind occurring in Deshays' case should have been publicly investigated and publicly acknowledged. In many another country a similar error would probably never have been admitted at all or at the best would have been interred in a decent obscurity. For our purposes the redress of the error is probably of more importance than its occurrence. And certainly for our purposes actual misbehaviour by the police is comparatively unimportant, provided that such misbehaviour is recognised to be, as it is in France, contrary to law. The question which is of importance is whether the existing system encourages in the police a course of conduct which easily and frequently declines into illegal misbehaviour and whether for the misbehaviour which occurs a prompt and effective remedy is provided. Moreover the scandalous cases here mentioned are evidently not a fair picture of the French system, if only because they are scandalous in the opinion of the French public also. But they have a relevance as explaining the present state of that opinion.

Conduct of the trial

The third main ground of criticism of the French system by the French themselves concerns the conduct in court of the final trial. It is felt that the presiding judge has an impossible task. There falls upon him, by custom rather than by reason of any precise text of law, the duty of examining the accused in court immediately after the formal indictment has been read out. In this examination the previous life of the prisoner, including his criminal past if he has one, is rehearsed: often to the evident and great prejudice of the prisoner. This examination is capable of giving rise to an unseemly wrangle between the prisoner and the president on matters of little apparent relevance to the issue to be tried that day. The president seems to be compelled at the outset to depart from the impartiality of his office and easily conveys the improper and quite false impression that he is more prejudiced and more vehement against the prisoner than the prosecution itself. Next, French opinion is disturbed by the insufficient and apparently muddled manner in which evidence, and especially perhaps expert evidence, is presented to the court of trial. Certainly that presentation seems to an English observer deficient. It is felt in France that confusion results and that in the resulting confusion the task of the jury—if jury it is—becomes unreasonably difficult and even impossible, particularly as the jury is deprived of the help afforded to it in England by the summing-up of the judge.

It is probably the mal-presentation of the evidence which is largely responsible for the numerous reforms, proposed and made in the past and now again brought forward, on the subject of the constitution and the function of the jury. Originally a body of twelve, expressly modelled on the English example and responsible, after deliberation among themselves alone, for a verdict (though by a majority) only upon the fact, they have now after many modifications been reduced to seven and become more lay assessors than a jury, since they sit and deliberate with the three judges of the court and pass not only upon the facts but also upon the sentence. One of the proposals now made is that their number should again be raised to nine, that they should consult with the court *during* the trial but that they should again retire to consider their verdict by themselves.

The foreign observer, faced with this state of what may be described as public indignation in France at the administration of criminal justice, would be well advised to be a good deal more temperate than the French critics. The public indignation at what may perhaps be admitted to be scandals is no doubt a healthy sign; but the reforms proposed may nevertheless be judged by the observer widely to miss the mark. The matters which now agitate French opinion should by him be seen as matters which for a very long time in French history have been a constant source of agitation in France. The introduction of the jury into French criminal procedure at the Revolution was itself the result of a revolt against what was judged to be the cruelty and the insufficiency of the then criminal trial. In 1933 and 1935, as indeed before then also, a very determined attempt was made to cut down the period during which a person charged with crime could be kept in prison before trial—again the object of the present criticism—but the only effect of that attempt seems to have been actually to increase the duration of the detention, with the result that in 1939 a return was made to the previous and now existing law. Similarly, the whole purpose of the famous law of December 8, 1897, was to protect the prisoner charged with crime during his interrogation. It was then believed that he required protection against the juge d'instruction. That law well succeeds in its purpose. Yet it is no doubt in part at least that very law which, by rendering relatively inefficacious the interrogation by the juge d'instruction, has given rise to the police inquiries and interrogations which now are the subject of condemnation.

To an English observer it is with French criminal procedure as it is with the attempt in England to reduce the cost of a High Court action: the reform which is alleged to be desired may be obtainable only, if at all, by the destruction of the institution which it is proposed to reform; and the institution itself seems to be cherished more than the results of the reform. A High Court action can be made cheap, it would seem, only by destroying its quality of being what a High Court action is: and in England when confronted by the final choice we are not willing to destroy that quality. So in France the accepted method of prosecuting criminals seems actually to be more prized, despite some of its necessary occasional defects, than any substituted method which would be adequate to eradicate those same defects against which there is now so clamorous a complaint. The substituted method, it may well be believed, would arouse more objection than it would appease.

English and French Methods Contrasted

The inquiry

In what then consists the real character of this accepted method, and upon what points does it present an instructive contrast to the English method? It is scarcely helpful to use the trite diagnosis that the French process is inquisitorial and the English accusatorial: first because we are not told what is the essential element in the process called inquisitorial which is offensive—the right and the duty of the *court* to inquire (if that is inquisitorial) is a most valuable and useful part of the French *administrative* process; secondly because it is questionable whether the French criminal process is predominantly inquisitorial in any precise sense—indeed most probably its defects are due mainly to its hybrid character; thirdly because it is hard to see how any criminal system could today be administered without a duty to inquire being cast upon some organised body, and it seems to me evident enough that such a duty is in England cast upon the police.

It is not the power or duty to inquire which makes a difference between systems: it may be the nature or character of the inquiry judged appropriate or fair which does. It is, I think, by the difference of their notions of what constitutes a fair or appropriate inquiry that the French and the English systems most differ. I trust that I do not unduly exaggerate when I suggest that in France it would be thought more than unfair, it would be thought most grossly improper, if the inquiry were conducted *ex parte*—without the presence of the person principally interested, the person, that is, against whom there were reasonable grounds of suspicion that he had committed the offence. The object of the traditional French process was not only to put the inquiry into the hands of a competent official—the juge d'instruction—but to draw the suspect in at the earliest possible opportunity. The presence of the suspect is not regarded as an imposition upon the suspect but rather as an important right of his. That an official should be allowed to gather together evidence against a citizen and to construct a case against him without his knowledge and without a right in him to make representations to that official and to put forward his own view of the situation from the start—that would generally be judged in France to be monstrous.

The suspect is brought into the French process at a point much earlier than that at which he is brought into the English process. In principle in France the inquiry proper—that of the juge d'instruction—starts *after* the suspect has been brought in: in England in principle the inquiry is concluded *before* the appearance of the prisoner in front of the magistrates. The magistrates in England do not conduct an inquiry: they hear the results of an inquiry which has been conducted. And indeed they are markedly restive if the police are not ready to produce those results by way of evidence very rapidly after the first appearance of the accused, especially if the police require the remand of the accused in custody. But if the magistrate has himself to conduct an inquiry and if it is judged right that the suspect should participate in that inquiry from the start, evidently the suspect will be a great deal longer before the magistrate ; and in a grave case where there are reasonable grounds for suspicion, almost inevitably the suspect will during the inquiry be remanded in custody. This seems to me to be of the necessity of the case once it is admitted that the suspect should participate in the inquiry. And it is almost a necessary consequence, human nature being what it is, that if the suspect *is* in custody by order of the magistrate conducting the inquiry the urgency of concluding that inquiry, which may be complex and difficult, will to that magistrate appear to be greatly diminished.

Representation by counsel

On the classical French view, because the juge d'instruction's process was an inquiry merely and not a trial, there was no room in his process for the presence of counsel. On that view, it was as sensible to have counsel injected into the instruction as it would be to require the suspect's solicitor to be attached to the C.I.D.

inspector in England. But in 1897 in France because of public outcry—which was no more unjustified then than it is now—counsel *was* introduced into the instruction. The suspect brought before the juge d'instruction must now, at his first appearance, be informed of his right to nominate counsel and, if he has none to nominate, he must be provided with one at his request. The juge d'instruction cannot address any question to the suspect except in presence of his counsel, and must twenty-four hours before any such questioning make available to counsel the whole of the file in which is recorded all the juge d'instruction's material concerning the case. Counsel has the right freely to communicate with the suspect at any time, whether or not the suspect is in custody.

Again it seems to me that if this kind of fetter is to be put upon an inquiry, especially if the view is maintained that an inquiry must be conducted with the participation of the suspect, it will necessarily be found that the process is extremely imperfect as an inquiry and likely to become very protracted. That undoubtedly is the French police view: inquiry by the juge d'instruction after the law of 1897 is in their opinion—and surely justifiably—hopeless as a police inquiry. And again, almost as a necessary consequence, we observe the growth in France of the enquête officieuse—the unofficial inquiry—by the police, outside the instruction: into which enquête, while the major French premise of the participation of the suspect remains, the suspect is almost of necessity again drawn. The growth of this enquête officieuse is further promoted by the constant delegation to the police by the juge d'instruction of such of his duties as he *lawfully* can delegate. The suggestion now mooted in France of injecting counsel into the enquête officieuse itself seems to me calculated to make confusion yet worse confounded.

Effect of the inquiry

Many further consequences flow from this participation of the suspect in the inquiry, of which I may note two. First, the attention of the prosecution is, again almost necessarily, centred upon the suspect: what he has to say assumes a capital importance. The French juge d'instruction is as much concerned to discharge a person falsely suspected of crime as to charge the person rightly suspected; but this centring of the attention upon the suspect is, at any rate in the English view, unhealthy. At an interrogation which I happened to attend it certainly could not have been suggested that the juge d'instruction bullied the suspect into talking: indeed the opposite was the difficulty—to restrain him from interminable speech. But the dialogue between the two necessarily amounted to a cross-examination ; and when the person is believed to be guilty the distinction between a cross-examination of this kind and the attempt to procure an admission seems to me metaphysical. The French process of inquiry appears to be principally concerned with the attempt to obtain an admission of the truth of the charge from a person reasonably believed to be guilty ; confession is self-evidently, surely, the most proper result of a properly conducted instruction which does not end in a discharge. It cannot be a matter of great surprise if in the hands of persons less meticulous and less well-trained than are the juges d'instruction, in Paris at any rate, such an examination should relatively easily degenerate into an attempt improperly to extort a confession.

The preliminary examination in France does not result in a finding of guilty—in the case of a committal for trial the juge d'instruction concludes *only* that a case sufficient to warrant the *trial* of the suspect has been made out ; and at the trial the prisoner continues, as much in France as in England, to be presumed innocent until the contrary is proved. Yet because the inquiry in France is one in which the suspect has officially participated and has been heard and during which he may have actually admitted the offence, the committal by itself is there a good deal more probative of his guilt than is the English preliminary hearing, where the magistrate normally takes cognisance only of the *ex parte* evidence collected by the police by its own process and for its own purposes and where the prisoner often enters only a formal plea of not guilty and reserves his defence. Moreover the whole of the material of the preliminary hearing, including the police procès verbaux of the enquête officieuse, is consigned in writing in the file, the dossier, which goes forward with the prisoner to the court of trial and which stands as an enormous weight against him. The dossier lies on the desk in front of the president of the court of trial, and indeed seems to preside over the court more than the president himself.

The dossier

It is the continuity of this dossier which may account for the horror felt in France at the notion that the preliminary examination might be conducted without the participation of the person now on trial: it is of great importance that *his* version of the circumstances should be introduced into the fatal file at the earliest possible opportunity. It is certainly this dossier which gives to the English observer the false impression that the prisoner at his trial in France is presumed guilty. And it is this dossier, I think, which produces the confusion at the trial which the French critics reprobate. At the French criminal trial oral evidence is orally adduced; but the evidence so adduced is not self-contained and complete in the English sense. It is not rehearsed anew, now once and for all, entire and in its only original form. It gives the impression of being excerpts only—fragmentary and imperfect excerpts—from a story more fully and more carefully told in the dossier. The dossier is at the disposal of the president but not, in court at least, of the jury. It is the fragmentary and imperfect nature of the oral evidence, or the impression that it is such, which makes the task of the jury in France so difficult or even impossible.

The jury

The jury is an English institution, and in England it works in the context in which it came into being, the English trial. It is a great art, needing much practice in counsel as well as in the judge, and a whole host of subsidiary rules, to enable oral evidence to be produced in such a fashion that it is not only coherent but conclusive. The subsidiary rules, the rules of evidence, are unknown in France; and counsel and judge alike have little practice in conducting such trials. The jury is in France an exotic innovation. It is scarcely matter for wonder that there it functions imperfectly. But the English observer should not conclude that the obvious remedy is therefore to introduce into France the circumstances of an English trial. I suspect that it would be repugnant to the French sense of justice and propriety to propose that the inquiry by the juge d'instruction should be jettisoned and that the guilt or innocence of the accused should be allowed finally to depend on what may seem to the French to be, and what in France might well be, the extremely fortuitous outcome of that markedly gladiatorial, and in any event highly peculiar, enterprise which in England we call a trial. On the contrary, the most promising line of reform in France—a line which is indeed proposed by the more perspicacious there—may well lie in the attempt to make more careful, more exact and more effective that very inquiry by the juge d'instruction which to us seems the obstacle and the anomaly.

The police

It is not, however, for the foreigner to propose reforms of the domestic system which he but observes. He is better employed in taking to heart for his own system the lessons which that observation may have taught. There is much else in the French criminal system which is instructive to the English lawyer—for example, the results in France of the professionalisation of the prosecution in the institution called the Parquet ; of the hybrid character of the juge d'instruction, half magistrate in our sense, half police officer ; and of the relations subsisting between this magistrate and the professional prosecution and the police. But the capital contrasts which I select between the French and the English criminal systems are these two. First, that we think it right and fair that the preliminary inquiry into crime should be conducted by the police alone, acting *ex parte* as they may be advised, and in principle without the participation of the suspect. The suspect is in England entitled wholly to dissociate himself from the preliminary inquiry: he need have nothing to do with the police unless and until they arrest him on a charge clearly formulated at the time of his arrest. At that moment he must be cautioned in a form which certainly entitles him, and in practice is taken to advise him, to keep quiet. This silence he is entitled to preserve, and in practice often does preserve, before the magistrate before whom he must by the police promptly be produced. The duty of the magistrate is merely to hear the *ex parte* evidence of the police and to decide whether that evidence so produced, usually without disclosure of the nature of the defence, is sufficient to warrant the committal of that prisoner for trial. And to trial in England the prisoner if committed goes, retaining intact if he so chooses what we regard as the very high privilege of an entire silence ; at the trial, before a jury, after the previous disclosure of the prosecution's evidence, once and for all to defend himself as he may be advised. The second contrast is this: that our trial is wholly self-contained and depends exclusively and entirely upon the oral evidence then adduced. Nothing can be carried from the inquiry into the trial except over the remarkable hurdle of the rules of evidence ; and everything which is so carried is as manifest to the public as it is to the jury. It is by the matter thus manifestly produced and by that matter alone that the guilt or innocence of the prisoner is with us finally determined.

There is much which I would like to add by way of comment. But I must select two points only. The first is this. It is to the observer extraordinary with what speed and efficiency the English police act. The time between the commission of the crime and the end of the process is short indeed ; and even more astonishing is the shortness of the period between the charging of the prisoner and his final trial. It is of the greatest possible credit to the system, and especially to the police, that this delay is so exceedingly short. The second comment is less cheerful. I would like to have asked myself, and my audience, whether the modern practice in England is in all respects best calculated to preserve and maintain the characteristics of the English system. I rather doubt if in all respects it is. The police, for example, do sometimes produce evidence of a confession or admission made by the prisoner which the prisoner denies in court; and sometimes the admission so made is critical, as it was not so long ago in the beastly case of the Tow-path Murders. That the police should seem to question the suspect and that evidence should be given at the trial of the results of that questioning—even if the questioning is, as I have no doubt it is, entirely free from any improper pressure—that seems to me to offend against both the principles which in juxtaposition to the French system appear as characteristics of the English system. It is, as I think, of great importance that we should endeavour to maintain those characteristics unimpaired; for they are the marks of a system which, as a system, seems to me to be quite exceptionally good.

Aspects of Forensic Science

By J. B. Firth, C.B.E., D.Sc., F.R.I.C., M.I.Chem.E.
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Motoring Offences

Motoring offences may be divided into two classes:—

(a) those where there are incidents involving one or more motor-cars;
and (b) those where the motorist is considered to be driving "dangerously."

The first type varies widely in gravity; the more serious incidents are those which are associated with the death of or serious injury to road users.

The less serious cases are those which are associated with damage to property—motor-vehicles and other property.

Both types call for police investigation of the true cause of the incident. In some cases the incidents are "genuine accidents"; others are due to negligence, of greater or less gravity, on the part of the motorists.

To enable the police to determine the cause, quite impartially, they will not only collect evidence from witnesses and, when possible, from persons involved, but they will also make a detailed examination of the scene and of the vehicle or vehicles involved, and it is in this last respect that the assistance of the Forensic Science Laboratory is frequently sought.

In far too many motoring accidents the motorist fails to stop, and fails to report the incident to the police, thus introducing into police investigations the problem "find the car." It is in such cases that scientific aid has been of considerable value.

What a motorist involved in such incidents fails to realise is the evidence he has left *at* the scene; and also, in many cases, the evidence *from* the scene which he has picked up. Thus the most careful examination of the scene and of the vehicle or vehicles involved is of the utmost importance.

The following examples will give some idea of the range of scientific aid which can be given in motoring offences. In some cases the scientific evidence completely exonerates the motorist and he would therefore have nothing to fear from reporting the accident. If, on the other hand, he runs away and a police hunt locates him, then, if he is identified with the incident to the satisfaction of the courts, his further offences of failing to stop and/or report the incident will also be considered.

Examination of paint

CASE 1. Whilst on her way to work a lady cyclist was knocked off her cycle and fatally injured, the motorist failing to stop. Included in the debris collected by the police from the scene were some flakes of paint which were examined at the laboratory.

Microscopic examination of prepared sections of the paint indicated that the car involved was painted black when first put into service; later it was painted green and, finally, silver grey. Ultimately a silver-grey car was located in a garage. It had been received in a damaged condition and had been repaired. The owner denied all knowledge of the accident. However, he was asked to produce his registration book, which showed that the car was originally black, then repainted green and, finally, silver grey. Control specimens taken from the car agreed with those from the scene. Specimens taken from the rear wings of the car gave interesting results, *e.g.*, paint flakes from one wing—no black layer, several green layers and one silver grey. Flakes from the other wing showed no less than fifteen layers, including black, green and silver grey—the silver grey zone was made up of three layers. These results showed that the car had been involved in several accidents to the rear of the car and some of them comparatively recently. The indorsements on the owner's driving licence confirmed this.

Subsequent police inquiries established that the motorist was in the vicinity of the scene at the material time.

Many modern cars do not permit this type of examination because, owing to the change in the method of body treatment, the paint structure may not be characteristic of a particular car. In such cases another method of attack may be possible.

When a metal surface is to be painted it is usual to prepare that surface with an abrasive, giving a surface which is a mass of scratches. Flakes of paint from this surface carry on their undersurface a casting of the metal surface from which it has come, having ridges on the paint corresponding to the grooves on the metal.

CASE 2. A man was knocked down by a motor-car and fatally injured, the car failing to stop. The scene appeared at first to offer no material to aid in the discovery of the car. After very careful examination of the scene by scientific staff, five tiny flakes of black paint were found (all five could be contained in a ½-in. circle).

All the flakes showed a casting of the metal surface from which they had come. Eventually a damaged black car was located and submitted for examination. After very painstaking examination, assisted by photographic technique, it was possible definitely to identify the flakes of paint with the car.

The evidence was so convincing that the owner of the car admitted the offence but committed suicide before proceedings could be taken. A somewhat similar technique is often possible by matching the surface cleaning scratches on paint from the scene with those on the suspect car.

CASE 3. A motor-cycle with side car had been in collision with a motor-car; the cyclist was seriously injured, the motorist drove on. Ultimately a damaged car was located which had obviously been involved in an accident but the owner denied all knowledge of the accident in question and produced what he considered to be a satisfactory alibi. The two vehicles were examined. Both vehicles were badly damaged, but much of the damage was of a type common to such accidents. Was there anything which would connect the two vehicles? There was a scratch mark running across the bonnet, across the glass of the door window and continuing towards the rear of the car. The two vehicles were put in positions as indicated by their respective damage and it became apparent that the scratch mark on the car *could* have been made by the nut head on the handle bar of the cycle. The scratched window was removed, together with the nut from the cycle and a detailed examination of the scratch mark on the glass gave remarkable results. Microscopic examination revealed that the mark was associated with tiny flakes of material, some of which were removed, and it was established by micro-chemical and spectographic analyses that this material was essentially a cellulose lacquer associated with traces of nickel and chromium.

Spectrographic examination of the head of the nut also gave nickel and chromium.

It was noted that many sections of the mark on the glass were built up of a series of ridges of cellulose material. On the head of the nut was a series of parallel scratches and grooves (accidental). By careful measurement it was established that the relative positions of the cellulose ridges on the glass agreed exactly with the scratches on the head of the nut, *i.e.*, the scratches on the nut had functioned as "moulds" and were responsible for the cellulose pattern on the glass. Since the scratches on the nut were there by accident and not by design it was established that these two vehicles had been in collision. It may be added that comparative photographs were used to demonstrate to the court the agreement between the ridges on the glass and the scratches on the head of the nut on the motor-cycle.

CASE 4. A man who had received several injuries, including serious head injuries, was found dead by the roadside. Examination of the head injuries at the post mortem revealed several small flakes of paint associated with the flesh. Examination of a suspect's car revealed damage on the roof above the windscreen near the offside pillar; this area, in addition to loss of paint, was associated with blood and hair. Laboratory examination of the paint from the wound agreed with that from the car, whilst the blood from the car was of the same group as that from the deceased and the hairs from the car showed microscopical agreement with hairs from the head of the deceased.

Material fibres

CASE 5. A group of persons were run into by a motor-car and several received injuries; the motorist failed to stop. A suspect car was found and carefully examined. Attached to the nut on the front bumper bar was a short length of artificial silk fibres. The identification of this short length ($\frac{5}{8}$-in.) of artificial silk fibre with fibres from the dress of one of the injured was a critical link in the chain of evidence. The defence alleged that the origin of the fibre was a waste used in cleaning the car which contained artificial fibres which, it was claimed, were identical with those of the dress.

The defence produced four such fibres from the waste; when examined, it was found that the threads from the waste were built up of *twisted* strands, whilst the threads from the dress (and recovered from the car) were built up of *straight* strands and completely devoid of twist. Thus it was established that the thread on the car did not originate from the waste.

CASE 6. During the war, a motorist driving home late one night (headlamps masked) saw what appeared to be a grey patch on the road which he thought was a recently repaired patch; when he drove over it he felt a rather severe bump. He stopped and went back to the spot. He found a man lying on his back in the road, apparently dead—the police were notified and a doctor called. A short distance from the body was the man's hat. The man was injured, the visible injuries being in the region of the ankles and the head. The doctor expressed the opinion that the man had not been dead more than half an hour, which implied that the man was alive at the time of the incident.

The motorist's car was a Wolseley car fitted with hydraulic jacks; one jack had been broken off and the foot of the jack was associated with blood and hair which agreed with the blood and hair of the deceased. The foot of the other jack was associated with blood and wool fibres which agreed with the blood and wool of socks of the deceased.

On the trousers of the dead man and at right angles to the length was a series of well-defined parallel black marks and also a scorch mark. The marks were associated with oil and suggested ribs on the sump. Examination of the car showed agreement with the number and spacing of the ribs, also the edges of the ribs were clean and free from the usual oil and dirt. The hot exhaust pipe accounted for the scorch marks.

Associated with the leather lining of the hat was blood and hair which agreed with blood and hair of the dead man.

From the investigations it was concluded that the man was lying in the road approximately at right angles to and some distance from the footpath. That he had not actually been run over, since the injuries indicated that the body was within the wheel track, corroborated by no evidence of tyre marks on the clothing.

Although the hat was found away from the body the presence of blood and hair indicated that the hat was on his head at the time of the incident. The conclusion from the investigations was that the man was lying on the road and the Wolseley motor-car passed over him.

Subsequent police investigations established that the man had a short time prior to the incident been put off a bus near to the scene for being drunk and disorderly. No proceedings were taken against the motorist.

CASE 7. A motorist was returning home one night when suddenly a man mounted a cycle and wobbled into the path of the car, was knocked down and killed. The motorist stopped, the police were notified and made appropriate investigations. At the post mortem on the deceased, a smell of drink was noted, whilst an examination of the blood of the deceased revealed alcohol equivalent to 8 ozs. of whiskey. Subsequent police inquiries indicated that the deceased had been drinking heavily in a nearby club and had left the club only a few minutes prior to the accident. The motorist was exonerated.

In cases where human beings are involved it is often of considerable importance that the car and the driver of the car should be found, and if it is established that the incident is the fault of the motorist, matters relative to compensation can be dealt with in the courts ; but if the motorist fails to stop and is *not* found, then reasonable compensation either to injured or dependants may not be possible.

Thus, in Case 3, cited above, the motor-cyclist, who was a comparatively young man, received such serious injuries that he was crippled for life and could do very little to support his family in the future, but police investigations and subsequent scientific examination resulting in the identification of the car responsible for the accident assisted considerably in obtaining compensation. If, however, no car had been located, reasonable compensation to the aggrieved would not normally have been possible.

Why do many motorists run away after an accident? Maybe the motorist, at the time, is not in a fit condition to drive a car—" drunk " or " overtired "—or maybe he has something or somebody in the car and he does not wish it to be discovered.

Examining for evidence of an accident

Motor accidents occur which do not involve human beings, but damage to property. In many such cases the motorist cannot run away because his car is immobilised as the result of the incident ; in some, however, damage is done but there is no motorist ; later a damaged car is located and police inquiries reveal that it was in the vicinity of the scene at a material time. The problem is to determine whether or not this vehicle was the one responsible for the incident. In quite a number of cases scientific investigations have been of considerable value. After such incidents material from the vehicle is often left at the scene, and also the vehicle picks up material from the scene.

One example of this type will suffice:—

CASE 8. A street lamp was broken by a motor lorry which did not stop. A short distance away a damaged motor lorry was stopped by the police and the driver of the lorry, who was under the influence of drink, was arrested.

The lorry driver denied all knowledge of the incident. The vehicle was examined; the goods on the lorry were covered with a tarpaulin and on the tarpaulin were recovered fragments of paint, glass and gas mantles. Examination of the flakes of paint found on the lorry established that they were identical with flakes from the lamp. Each flake had *twelve* layers and the sequence of colours agreed. A piece of glass recovered from the lorry fitted exactly a piece taken from the street lamp, but identity was more definitely proved by the presence of a number of fine striations on the edge of the piece of glass from the lorry and from the street lamp. These were identical, not only in width, depth and length, but more important, in sequence. The striations were strain markings or " chords " produced in the manufacture of the glass. The street lamp was gas lit, hence the fragments of gas mantles on the lorry.

Drink or drugs

The behaviour of a motorist on the road may be such that he attracts the attention of the police and he is stopped; his fitness to be in charge of a vehicle may be in doubt, and in the majority of cases his fitness may be further tested by medical examination and a determination of alcohol content in the blood or urine or both. The alcohol content of blood or urine is determined at the laboratory. In addition to supplying a specific figure for the alcohol content it is usual also to give the result in terms of common alcoholic liquors such as beer and whiskey. It should be noted that the laboratory results obtained represent the alcohol content at the time of taking the sample, and therefore are *less than* the actual amount consumed. The difference between the total amount consumed will be materially influenced by the interval between the last drink and the taking of the sample. The alcohol oxidised in the body per hour is approximately equivalent to a single whiskey or one pint of beer. The results thus obtained are frequently of value in testing the accuracy of the motorist's statement.

All Forensic Science Laboratories have considerable experience in these alcohol determinations—the methods have been thoroughly tested.[1]

In investigations to determine the cause of an accident it is often desirable to check the alcohol content of the motorist, if he is available at the time—the result, of course, may or may not be in his favour—otherwise it is useless. If, however, he fails to stop it may well be that he realises his " alcoholic condition " will be detected.

In accidents involving human beings the alcohol test is very frequently applied to the deceased or injured person because, as already indicated (Case 7), the alcoholic condition of the dead or injured may afford an explanation of the accident.

Driving dangerously, or " to the danger," may not be due to alcohol but to other causes, *e.g.*, drugs or illness.

In one case which may be cited, a motorist was observed driving dangerously; he was stopped, detained, and a sample of his blood obtained and no alcohol was found. The incident occurred in November; the motorist was a diabetic and had been delayed by fog so that he had overrun his " insulin period."

In some courts it would seem that it is not fully appreciated that the determination of the alcoholic condition of a motorist *follows* either an accident or unusual behaviour on the road, and is taken to determine whether or not the presence of and the amount of alcohol affords a reasonable explanation of the behaviour of the motorist.

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[1] Compare [1954] Crim.L.R. 443. The author served on the panel of experts referred to.

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An Australian Letter

Melbourne,
February, 1955.

Australian lawyers delight in the heritage of their law. Not even reverses on the cricket field can dim their satisfaction in its deep roots in England. Virtually every case and every legal issue at some stage imports this sense of historical continuity; but only rarely do the family origins of the law's servants symbolise it. One such exception is to be found in the Stephen family, notable in English public life, in English law, and in literature (to which it contributed Sir Leslie Stephen and his daughter Virginia Woolf). In 1825, one member of the family, Alfred Stephen of Lincoln's Inn, married and emigrated to Australia, taking up residence in Hobart Town in Van Diemen's Land, as Tasmania was then called. He was immediately appointed Solicitor-General. His father, John Stephen, had come to Australia from the West Indies a year before, and was appointed the first puisne judge in New South Wales in 1825, the year of Alfred's emigration. Later, Alfred's younger brother, George Milner Stephen of the Middle Temple, emigrated to South Australia, where he contributed greatly to the young community, becoming for a time, Acting-Governor. In 1839, his father having resigned from the bench in 1832, Alfred Stephen (later Sir Alfred Stephen, P.C., G.C.M.G., C.B.—this sort of thing happened to many of them) was appointed to the Supreme Court of New South Wales. In Tasmania he fathered nine children; in New South Wales nine also—two successive wives; nine children each; nine boys, nine girls; fine, judicial impartiality. In 1887, Henry Stephen was appointed to the same bench: in 1929 Milner Stephen also. Four successive generations of the same family on the same bench and most certainly appointed *per capita non per stirpes*. At this stage, the Stephen family had produced ten judges; two in England, four in New South Wales, two in Victoria, one in India, and one in New Zealand.

These high judicial offices are not the full measure of the significance of the many members of the Stephen family to the growth and development of Australia. The range and quality of their contribution cannot, however, be even sketched here.

Frank C. Stephen is at present a District Court judge in New South Wales. Last year he decided a question which an earlier Stephen, Sir James Fitzjames Stephen, had carefully avoided.

Misprision of Felony

At the court of quarter sessions held in Sydney, New South Wales, on July 21, 1954, one Hosking was charged before Judge Stephen with misprision of felony. The issue was simply phrased: does the misdemeanour of misprision of felony still exist and, if so, what are its constituent elements?

Stephen, in his *History of the Criminal Law,* dodged the task of tracing the growth of misprision and precisely defining its functions, merely referring curtly to his *Digest*. In 1887, in the last edition of the *Digest* which he edited, he wrote (Art. 157): "Everyone who knows that any other person has committed felony and conceals or procures the concealment thereof, is guilty of misprision of felony." In a note he added (p. 372): "The definition of misprision of felony is extremely vague."

An authoritative definition was still unavailable to Judge Stephen. The last reported English judicial consideration of this offence was by the Court of Criminal Appeal in *Aberg* [1948] 2 K.B. 173, where Lord Goddard said: "The third count was a count for misprision of felony. . . . Misprision of felony is an offence which is described in the books, but it is an offence which has been generally regarded nowadays as obsolete or fallen into desuetude. Although . . . there have been recent cases [1] . . . in which counts for misprision of felony have been preferred, I desire to say that if in any subsequent case it is thought necessary to put in a count for misprision of felony, it would be desirable that great care should be taken to see what, according to more modern authorities, are the constituents of that offence."

The next previous dictum is that of Lord Westbury in *Williams* v. *Bayley* (1866) L.R. 1 H.L. 200; but again, neither the offence's existence nor its elements were determined. To look behind 1866 is to encounter an antique fog.

American cases help not at all. Several states have statutorily created offences akin to misprision; otherwise prosecutions are, if anything, less frequent than in England. The textbooks are likewise inconclusive, though they incline towards regarding the offence as still the subject of a valid indictment. According to Archbold, 33rd ed., p. 1512, "misprision of felony consists in concealing or procuring the concealment of a felony known to have been committed," it "seems" to be triable at quarter sessions, and the offence "appears" to be founded on a duty to inform the police of the commission of a felony.

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[1] See, *e.g., R.* v. *Casserley, The Times,* May 28, 1938 (woman convicted of the misprision of the manslaughter of her husband by her lover).—Eds.

Some points are clear—misprision of felony approximates to but is clearly distinguishable from compounding a felony (which requires an agreement not to prosecute, misprision does not), from being an accessory before the fact (which requires privity to the commission of the felony, misprision does not), and from being an accessory after the fact (which acquires assistance to the felony, misprision does not). But if the above definition and these propositions completely define misprision of felony, then, as Professor Glanville Williams has pointed out (*Criminal Law—The General Part*, § 69), " it would make it an offence for a mother to fail to inform the police that her eight-year-old son has taken a cake from the pantry, knowing that it is wrong to do so."

Before Judge Stephen the defence argued that the offence originated when there were elements of communal responsibility for crime and no organised police force and when a duty, subject to a sanction, was necessarily cast on every citizen to assist directly in capturing the felon—the " murdrum," or fine on the members of the Hundred for a Norman killed within the Hundred if the culprit were not produced, is a well-known illustration. The defence advanced the consequent proposition that the offence is completely archaic and inapplicable to modern conditions. Judge Stephen rejected this line of argument, holding that misprision of felony, not having been abolished by statute, and being well known to the developing common law, remains a crime.

The defence argued further that if misprision of felony existed it required either that the accused was an actual eye-witness of the commission of the felony, or if not, and his knowledge of it was indirect, that he must have made some profit or gained some material benefit or emolument by concealing his knowledge. The " eye-witness " distinction has only the most medieval support. Judge Stephen ignored it, and held simply that for a conviction of misprision of felony it must be established that the accused took some material gain, benefit or emolument from his concealment of the felony. Proof of this element being lacking in the instant case, he directed an acquittal.

This view, as well as being preferable on the authorities, accords with the law's general assessment of the minimum functions of the individual citizen in the enforcement of the criminal law—not to be obstructive and, possibly, in an emergency and when called upon to do so to render aid to the police. However, if by his inactivity, silence, or concealment a citizen gains directly and financially from the commission of a felony, then it would not seem inappropriate to encumber him with a heavier legal duty and to punish him if he fails to perform it.

It seems to me, that in a period of decreasing regard for the criminal law and lesser support for the police, misprision of felony may deserve revival. Ultimately, the repression of crime is a community responsibility, and the existence and occasional prosecution of this offence expresses and underlines this truth. If, however, you believe that the arsenal of the law does not need this weapon, and hold that Judge Stephen erred in rescuing it from the desuetude to which altered social conditions consigned it, then the need for legislative action, if only on grounds of tidiness, is obvious.

Attempt

R. v. *Chellingworth,* 1954 S.R. (Queensland) 41, caricatures our failure to achieve a satisfactory definition of a criminal attempt. In his opening address, outlining the evidence that would be adduced on a charge of attempted arson, the Crown prosecutor said that it would be shown that the accused had previously threatened to burn down the premises, that he was found on the premises at five o'clock in the morning with a half-empty tin of petrol in his hand, that the walls and floors were splashed with petrol, and that there were on the premises bags soaked with petrol. At this stage, he said, Chellingworth had been interrupted. No evidence would be adduced that he had at any stage actually tried to set fire to the premises. The trial judge, Sheehy J., then intimated that if this were all the evidence proposed to be adduced, he would be prepared to rule that there was no overt act sufficiently manifesting an intention to commit the offence to sustain a conviction for an attempt, and that, in his opinion, the acts said to have been done were only in preparation for the offence of arson. The Crown withdrew the prosecution.

Very little law was cited, reliance being placed on the undoubtedly correct but not very helpful proposition that "mere intention to commit an offence does not constitute an attempt." No endeavour was made further to analyse whether any of the above suggested acts of the accused went beyond preparation and constituted a sufficiently proximate overt act for a conviction.

If the accused follows such a course as Chellingworth is said to have pursued it is hard to see, on this view of the law, how he could in practice ever be convicted of an attempt. All that remains for him to do is to strike a match, set fire to the premises, and run for his life. He would then have committed arson—not attempted arson. Presumably, if he has taken a box of matches out of his pocket and is poised with the match swinging towards the box when he is interrupted, he could be convicted of attempted arson; but until the matches are in his hand, if the instant case be correct, he cannot be so convicted. This precision of interruption by the police or by others in protection of their property is a remarkably unlikely contingency. It is submitted, however, that this analysis is superfluous, the decision being erroneous.

The test which the courts, both in England and Australia, seem to apply, though it is formulated in the textbooks rather than in judicial pronouncements, is one by which the *actus reus* necessary to constitute an attempt is regarded as complete if the prisoner does an act which is a step towards the commission of a specific crime, and that act cannot reasonably be regarded as having any other purpose than the commission of that specific crime. Oliver Wendel Holmes Jr. put the same proposition more lucidly when he wrote "as the aim of the law is not to punish sin, but to prevent certain external results, the act done must come pretty near to accomplishing that result before the law will notice it." The Queensland Criminal Code, by section 4, defines attempt in similar terms: "When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fulfil his intention to such an extent as to commit the offence, he is said to attempt to commit the offence." It is hard to see how this definition can be interpreted to exclude the facts alleged in *Chellingworth*.

The sufficient proximity of the overt act to the commission of the crime, being a question of law for the judge, deserves more precise analysis than the courts have as yet accorded it; certainly more than it received in *Chellingworth*. One of the difficulties may lie in the belief, in Queensland statutorily accepted, that a single test can be phrased capable of defining attempt generally. It may be that an overt act closer to achieving the intended harm should be required for the conviction of a lesser offence than for a more serious one—thus, for attempted larceny the accused would have to come closer to the actual commission of the offence than for attempted murder. It is submitted that, in practice if not on the face of the law, the courts are drawing some such line of distinction as this. If so, ultimately we may produce a series of definitions of attempt applicable to various specific or grouped crimes.

The earlier Victorian case of *Page* [1933] Argus L.R. 374, illustrates a precise if somewhat rigid application of the law. The accused determined to break into a factory. It was established that he mounted a ladder and inserted a jemmy underneath the window-sill of the factory. He then climbed down the ladder and walked away. He was then arrested. He confessed his intention, and said that having inserted the jemmy he "thought of his mother" and desisted from his criminal purpose. He was convicted of attempting factory breaking. If, as seems unlikely, Page reads the reports, he must be distinctly piqued with *Chellingworth*.

The Unavoidable Crime

Since first reading criminal law I have had the greatest sympathy with Miss Larsonneur who, in 1933, was held by the Court of Criminal Appeal (1933) 24 Cr.App.R. 74, to have offended against Article 18 (1) (*b*) of the Aliens Order, 1920, by being an alien who was "found" in the United Kingdom without permission. Miss Larsonneur was a French woman who, it is said, worked more by night than by day. She decided to come to England, possibly in an endeavour to acquire a sufficient dowry to return to a happy Continental marriage. She was given permission to land in England. Later, the propriety of her means of livelihood being doubted, she was required to leave. Anxious not to commit an offence, she promptly travelled to the Irish Free State. Far from being welcomed there, she was arrested and handed back in custody to the English police. She was then, by skilful detection, "found" in the United Kingdom—in a cell. The Court of Criminal Appeal held her offence to be complete. How far must one go to avoid committing a crime?

Now there is a recent Australian case to put beside that of *Larsonneur*. One Fisher was in attendance at a party on private premises. For some time he had been steadily increasing his blood-alcohol count. The police entered the premises on other business. They held conversation with Fisher, urging him vehemently to accompany them. This he did. When he reached the street they arrested him and subsequently charged him with being "unlawfully drunk in a public place" contrary to the provisions of section 74 (1) of the Police Offences Act, 1936–1951.

In *O'Sullivan* v. *Fisher*, 1954 S.R.(S.A.) 33, Mr. Justice Reed of the South Australian Supreme Court refused to disturb Fisher's conviction. He held that on this charge it is not necessary for the prosecution to prove that the accused intended to get drunk; nor that he intended to be in a public place; nor that he knew where he was; and that the forcible removal of a drunken man from private premises to a public place by lawful authority will not afford that man a defence to a charge of being unlawfully drunk in a public place. He conceded, however, that proof that a man was compelled by physical force, used by a person or persons having no lawful right or authority, to go into a public place, would afford him an answer to that charge.

Morality and law are indeed overlapping circles, and perhaps when Larsonneur and Fisher strayed from the paths of moral rectitude they thereby lessened the odds of their avoiding their ultimate criminal conviction; but it may be wondered whether the circle of law should, in these cases, have overlapped quite so far over the somewhat narrow bounds of moral conduct.

Vicarious and Strict Liability

As the criminal law increasingly becomes the sanction by which legislators seek to enforce their public health, marketing, licensing and similar plethora of rules, so the requirement of guilty intent and personal wrongdoing, characteristic of the developing common law, suffers its statistical decline. *Hawthorn* v. *Bartholomew*, 1954 Victorian Law Reports 28, is another integer in these statistics.

Bartholomew was charged with having in his possession two carcasses of pork which had not been branded as required by the Victorian Health Act, 1928. The carcasses were found in a van owned by Bartholomew but being driven by one of his servants. There was no evidence that Bartholomew knew that the carcasses were not branded. Gavan Duffy J. held that Bartholomew's ignorance of the presence of the unbranded carcasses of pork in his van did not preclude a conviction for this offence, and that, even if it were shown that both Bartholomew and his servant reasonably believed that all the meat in the van was properly branded, Bartholomew would still be guilty.

The nature of the legislation, dealing as it did with details of public health, the lightness of the maximum penalty which could be imposed, a fine of £20, and the fact that other sections of the Act expressly required various states of guilty mind by using such expressions as "unlawfully," "knowingly," and "wilfully or negligently," all pointed towards this conclusion, but a further step was required for a conviction. After all, at first sight, these carcasses were not in Bartholomew's possession; they were in the possession of his servant. One can, of course, regard them as in Bartholomew's possession by drawing analogies with the concepts of possession developed in the law of larceny by which, once the chattel has been committed by the master to the servant's care, the servant can commit larceny of that chattel from the master, and one who takes it from the servant is held to interfere with the master's possession. Gavan Duffy J. explicitly followed this line of reasoning.

There is also some support in Roman law for denying possession to the servant. But these analogies are by no means compelling. For other purposes the servant will be held to have possession of his master's chattel. Further, supposing that it could be established that Bartholomew's servant by his deliberate fault had not taken the appropriate steps to get the carcasses of meat branded as statutorily required, the health inspector might well have launched a prosecution against the servant and not against Bartholomew. It is unlikely that the master-servant possession analogy from the law of larceny would have secured the servant's acquittal—yet, if *Hawthorn* v. *Bartholomew* is right, that must be the correct decision, for possession in both master and servant for the purposes of this offence is unthinkable.

The " possession " point in *Bartholomew* is unusual; but the extension of the area of the master's criminal liability for his servant's acts accords with a tendency in recent English cases to extend the area of vicarious liability in what certain American writers have called " public welfare offences."

It cannot be doubted that sanctions are required to compel those who, like Bartholomew, engage in activities which can seriously threaten public health if they are not carefully performed, to maintain prescribed standards, nor by employing others should they be enabled to avoid this duty of care. What can be argued is that the criminal law is not the appropriate vehicle for this purpose. It may be that the time has come when actions that are civil in nature and not based on the processes of the criminal law should be devised to achieve this type of social protection. It was clearly right to make Bartholomew pay for his failure to see that health regulations were maintained throughout his business; but it is hard to think of him as a criminal. To convict him of what is designated a criminal offence under such circumstances is to blur the line which ought to be clearly drawn if the respect of the ordinary person for the criminal law is to be maintained.

NORVAL MORRIS.

Advocacy at Petty Sessions

By B. Fraser Harrison, *Solicitor*

(*Continued from p.* 229)

Preparation for Summary Trial

A man who has been arrested is seldom tried on his first appearance in court, unless the charge is a simple one, such as being drunk and disorderly: usually there is a remand so that the prosecutor may obtain further information and prepare his case. Similarly, the accused's defence may not be ready. In the case of a summons, however, the accused is frequently tried on the day that the summons is returnable. Again, the prosecutor or—as is more likely in this case—the accused, may ask for an adjournment.

There is no reason why the accused should not object to his trial being postponed if there is likely to be any lack of justice as a result, but reasonable requests by either side for an adjournment or remand are seldom refused.

To avoid wasting the time of witnesses the accused's solicitor may ask the prosecutor a day or so before that fixed for the trial whether he intends to proceed on that day. It is courteous to tell the prosecutor of the defence's intention to ask for an adjournment, and to do so may save the accused costs in the form of witnesses' expenses. It is also wise to inform the clerk to the magistrates and ask him whether the application is likely to be granted.

The decision to allow or refuse the delay is the magistrates' and, in theory, no one may usurp their powers by agreeing before they are asked, but most magistrates' clerks are helpful and will advise a solicitor whether or not he can rely upon the adjournment being granted.

Briefing counsel

On those occasions when counsel is to appear a brief is required to give him the facts of the accused's case. A brief consists of a backsheet, the documents that are required, and the actual brief, or résumé, itself. Upon the backsheet, which by custom should be written on brief-sized paper, is written the court in which the case is to be heard, the date and time of hearing, the names of the parties, the party for whom the barrister is appearing, the latter's name, his fee and, finally, the solicitor's name.

The copied documents that accompany the brief are usually typed on foolscap paper and include the depositions (if the case is being heard at assizes or quarter sessions), correspondence, and anything else that is to be an exhibit. It is not usual to give counsel the original documents; they are the solicitor's responsibility, and if the documents are voluminous additional copies will be necessary for the tribunal, the witnesses while giving evidence and, perhaps, the other side. Witnesses' statements are also typed on brief paper and, with the brief, are attached to the backsheet.

The brief itself is a consolidated story, made up from the accused's and the witnesses' statements, and in it the solicitor makes his suggestions and comments, particularly on the quality of the witnesses.

Once he has received the brief the responsibility for the conduct of the case is counsel's. He may seek his instructing solicitor's advice, but the decisions are his. It is a solicitor's favourite complaint that barristers arrive at court without having read their briefs. This complaint is sometimes justified, but is frequently caused by the late hour at which the barrister receives the brief. Once the date of hearing is known and the brief is ready, there is no reason why it should not be delivered. A solicitor may have decided to brief counsel, but may not be able to have the brief ready until two or three days before the day of trial: in order to be sure of his man it is advisable to tell the barrister's clerk of the date of hearing and ask him to reserve the barrister for that day.

As in any other court, the solicitor is responsible to the barrister for his fees once the brief has been delivered, and no client is less likely to meet his solicitor's charges than one who has unsuccessfully been defended in the magistrates' court; therefore, the wise solicitor always receives payment, at the very least, of his " out-of-pocket " expenses before the trial.

Etiquette demands that counsel is accompanied by a solicitor or a member of the latter's staff in court.

Conference

Before the case is heard there is a conference between client, barrister and solicitor and, occasionally, some or all of the witnesses. Nowadays this usually takes place immediately before the trial, but if the solicitor thinks it is warranted, there is no reason why it should not take place some days previously.

Warning notices

It is surprising how foolish business men can be over dates, and nothing is more infuriating than to arrive at the court and have to spend a hectic half-hour telephoning all over town to trace an important witness. This may be avoided by writing to the client and witnesses reminding them of the date and time of hearing; it does no harm to include counsel's clerk on the list. For the benefit of the habitually unpunctual everyone should be warned to be at court at least half an hour before they are required.

The court

The personalities taking part in a trial in the magistrates' court are the magistrates, their clerk, the prosecutor, the accused's advocate, the accused and the witnesses.

The magistrates

Except in the case of a stipendiary magistrate, who may sit alone, the minimum number of magistrates who may try an information summarily is two. The magistrates are the sole judges of both fact and law, although they may be advised on questions of law by their clerk.

Strictly speaking, the bench as a whole should be addressed as "Your Worships," no matter what other position the chairman or any other member of the bench may hold. A stranger to a court can never be criticised for so addressing the bench, but if he finds that the chairman is also, say, a county court judge and the other advocates are referring to him as "Your Honour," presumably he prefers that title, and the stranger will do well to follow suit. If, however, the chairman is spoken to in a more personal manner, *e.g.*, as "Sir George," it might be considered presumptuous for a stranger to use this form of address, and in such a case "Your Worships" is safer.

The clerk

A magistrates' clerk holds a peculiar position. In theory he is an official, there to do no more than advise and assist the magistrates to perform their functions. Most clerks are very ready to assist those who appear and to ensure that justice is done in their courts. There are still many unqualified clerks, although they are gradually being replaced by solicitors.

Despite their theoretical lack of authority often a clerk is the strongest personality in the court, and although the Divisional Court makes pronouncements against their doing so, they sometimes influence the magistrates in their decisions.

A clerk who repeatedly intervenes is not easy to handle. He would not behave so unless he knew his magistrates allowed him to, and it is obvious whom the magistrates would support in a difference of opinion.

Local practice occasionally differs, but the correct way to talk to a clerk is through the magistrates. The reason for this is that the magistrates and their clerk are considered to be one, and a question from the clerk is a question from his magistrates. They are, therefore, the persons with whom the discussion takes place, even though they may talk through their clerk.

The most effective way of dealing with an interfering clerk is to know the rules of evidence. If an advocate does nothing that he is not entitled to do, it is difficult for the clerk to interrupt without running the risk of the accused seeking his remedy by way of appeal.

The most difficult clerk to cope with is one who insists on entering the advocate's arena and asking questions. There is no harm in this if the clerk awaits an opportune moment. All too often such a clerk will interrupt an examination, perhaps after a crucial question, and thus protect a witness. There is little that can be done to stop this, other than for the advocate to make sure that all his questions are fair and clear. If, in spite of this, the clerk interrupts, the magistrates must be asked to control him, but an advocate must be very, very sure of himself before doing this.

The opponent

The other advocate in the case is never referred to by name. He is called " My Friend " if he is a solicitor, and " My Learned Friend " if a barrister.

Throughout he is treated with the utmost courtesy. When he is addressing the bench or examining a witness it is extremely ill-mannered to interrupt except to object that a question which he has asked is an improper one; then the objection is made quickly and clearly before the witness answers. When an opponent is incorrect in anything he says to the magistrates he may either be interrupted during his speech or, more effectively, the magistrates may be told of his error when he has completed it. When an opponent is speaking an advocate usually remains seated, and if the opponent is interrupted during his speech it is courteous for him to sit down until the objection has been stated.

Nothing is more undignified than to see two advocates arguing and wrangling together as though they were taking part in a verbal boxing match. The more friendly the two advocates are the better they conduct their cases. This does not mean that friendship should deter an advocate from taking advantage of any weakness in the other side's case or the failure of his friend to prove some necessary fact, but justice is more likely to be done if the whole trial takes place in an atmosphere of dignified and amicable restraint. A client, however, may place a wrong interpretation on an apparent amity between the man appearing for him and the prosecutor, and to avoid a suggestion that an advocate has not done his best for fear of embarrassing a friend, any show of social intimacy, such as lunching together during the adjournment, is best avoided unless the client is sufficiently intelligent to understand the true role of an advocate.

The witnesses

A witness has an unhappy part to play. He receives no benefit, whatever the outcome of the case. Merely because he happened to be at the street corner at the moment when the two cars collided, he has been seen by police officers or had to go to a solicitor's office, where he has been badgered and argued with until he has recollected what occurred. He has had to lose a day's pay to sit in an uncomfortable court and finally is thrust into a witness-box, where at least one side is likely to accuse him of perjury. It is not surprising, therefore, that witnesses are more helpful to an advocate who treats them with courtesy.

It is sometimes necessary to question a witness vehemently, perhaps even to call him a liar, but shouting and bullying is never likely to do other than rouse the sympathy of the magistrates so that, if the witness does make a slip, they will presume he was too embarrassed by the advocate's unpleasant behaviour to understand the question rather than that he has been found out in a lie.

(*To be continued*)

Court Scene—Oslo

By M. Scott

When foreigners are observed in English courts, it is often remarked that their lack of understanding of the language must greatly limit their appreciation of our legal system. It is possible, however, by this blacking-out of one of the media of observation that they see in rather clearer focus some of the cardinal features of the criminal procedure. This at least was the experience of two English visitors to a criminal court on the Continent recently. The court was the Assize Court in Oslo, a tribunal of similar standing to an English Assize Court, and by the courtesy of court officials seats were provided which allowed an almost embarrassingly close view of the proceedings. We were installed next to the jury box and as our knowledge of the language was limited to Ja and Nei for yes and no, we were struck by several aspects of the proceedings which were not affected by our ignorance of the language. The midday adjournment was over at 1.30 when the trial was resumed of a man appearing on two shopbreaking charges.

The court

There were one or two interesting differences to be noticed between the layout of the Norwegian court and a typical English one. Three judges sat at a raised bench. They wore black gowns, but no wigs and no bands and were none of them over middle age. Indeed one of them with sandy hair and ruddy face looked as if he might still turn out for the local swimming club. The demeanour of the judges was, however, consistently serious. To their right as one faced them, sat the Crown prosecutor at a bench which was a continuation of theirs. The defending advocate sat on the left at another table at right angles to the judges' bench and facing the jury. The two advocates were attired like the judges. The jury box contained ten men and women and the foreman had a larger seat than the rest. The witness stand was in the centre of the floor and the prisoner sat directly opposite to the jury, accompanied by a gaoler and only a yard from his advocate.

The trial was marked by the absence of several things normally found in the English court scene. There were no uniformed court officers, only a janitor in a brown lounge suit. The clerk of the court was not tucked beneath the judges' bench: he was away in a far corner behind the bench but in the room rather than in the case. We looked in vain for a sign of an instructing solicitor but realised that under the Norwegian legal system, where there is not the distinction between the two branches to be found in England, the advocates would have prepared their own briefs. The chief absentees, however, were the press reporters: there were none to be found, for the excellent reason, as we were later informed, that two shopbreaking offences were not " news." Not only were there no pressmen, not a sign could be seen of even an official shorthand writer.

The trial

The trial was halfway over when we arrived and it continued in rather similar style to an English trial, with four witnesses being examined and cross-examined. It seemed strange that both counsel sat during the examination of the witnesses and one even sat whilst later addressing the jury, though this we found was with the permission of the court and was due to a leg injury. Each advocate addressed for about 20 minutes, then the judges retired. This we gathered was in order to consider any legal questions raised in the course of the hearing. Three judges were considered desirable for this part of the trial: the summing-up to the jury was however given only by the presiding judge. The prosecuting counsel prepared a series of questions for the consideration of the jury and these were approved by the judges before being left with the jury, who retired to consider their verdict.

The chief impression up to this point had been the comparative informality or even casualness of the proceedings. The witnesses were not sworn and this omission increased our sense of the greater dignity of the English court. However, due to the very friendly explanations and assistance given by two of the lawyers engaged in the case, we were supplied with a copy of the questions above mentioned and also with a copy of the indictment. This latter, after interpretation, proved especially interesting and an extract is appended.

CHARGE

CROWN PROSECUTOR
in
OSLO CIRCUIT

AAGE KLARENCE JANSEN—born 28.5.1927. p.t. on remand in Oslo District Prison Dept. A., is hereby charged by Eidsvatlig Court of Assizes according to *CRIMINAL LAW ss. 258, 257, 263*[1] *and 62* with having removed or helped to remove an article which belongs partly or wholly to another, for the purpose of obtaining for himself or others an unlawful profit by procuring the article, since the theft is considered larceny because it was committed by housebreaking, namely by forcing for himself or other unlawful access to a building or room in a building or to a closed yard or similar storage or living space by damaging the device which is designed for protection against housebreaking, or because the theft amounts to a considerable value

(a) by Monday night the 22nd February 1954 forcing access to *Eik and Hauskens* Tobacconists on Nygaten 12, Oslo, by breaking the padlock on the rear entrance to the shop with a pipe wrench and to have removed from the shop tobacco and chocolate, stamps, cash etc., to a total value of ca. kr. 2600 (£130) or to have assisted hereto

(b) Monday night the 1st March, 1954 together with *Rolf Nielsen* to have forced access to Fotchusets shop in Karl Johansgate 21, Oslo, by forcing a screwdriver between the door and the frame and at the same time applying pressure to the door with the result that the door frame was cracked and the lock freed; and to have removed from the shop three film cameras (movie) and two ordinary cameras to a total value of kr. 2000 (£100) belonging to the shop or to have assisted hereto

The accused was sentenced for the above by Oslo Magistrates Court (" Town Court ") on 22/5/54, but has appealed against this decision on the grounds that he considers himself innocent.

It will at once be noticed how detailed and elaborate is the phraseology relating to the offence. One is reminded of the old indictments in this country before the great procedural reforms over forty years ago. An extensive knowledge of Norwegian criminal law would be required to explain the reason for the detail on, for instance, the actual forcing of the lock or the facts from which larceny could be inferred. The document seemed out of keeping with the informal character of the rest of the proceedings and it caused reflection on the inability of the foreigner to comprehend that which makes the traditional practices so natural and reasonable to the native. This difficulty is even better instanced from our English practice where the comparatively simple form of the indictment is coupled with a style of court procedure which is elaborate.

To the rationalist, neither combination would be justifiable—the formal indictment coupled with the informal court procedure or its reverse—and for the traveller also, home practices seem more sensible than those abroad. It would be wrong, however, to suggest any other than a common basic pattern to the criminal trial procedure in both countries and in one small matter there was ground for comfort for the insular. Norway is supremely a milk drinking country and it would have been entirely in keeping with practice outside the courtroom for the lawyers to have glasses of milk for their refreshment. We noted, however, with some satisfaction, that the English custom had prevailed and none of the tumblers contained anything more opaque than water!

Practice and Procedure

Magistrates' Courts

Disappearance of a right of appeal

If the truth of an information or complaint had not been admitted, section 19 of the Summary Jurisdiction Act, 1879, gave a right of appeal to quarter sessions " where, in pursuance of any Act, whether past or future, any person is adjudged by a conviction or order of a court of summary jurisdiction to be imprisoned without the option of a fine, either as a punishment for an offence, or, save as hereinafter mentioned, for failing to do or to abstain from doing any act or thing required to be done or left undone, and such person is not otherwise authorised to appeal to a court of general or quarter sessions." A proviso enacted that the section was not to apply to imprisonment ordered for a default in paying money or in entering into a recognisance, finding sureties or giving security.

One of the provisions of the Ninth Schedule to the Criminal Justice Act, 1948, was that section 19 of the 1879 Act should " cease to have effect so far as it relates to a conviction." The reason for this lay in the fact that the new Act contained a section which reproduced, with modifications, the previous law governing the right of appeal in case of conviction. There was left in force under section 19 of the old statute the right to appeal to quarter sessions against imprisonment ordered for failing to comply with an order of a magistrates' court not relating to money or a recognisance or the giving of security.

The Sixth Schedule of the Magistrates' Courts Act, 1952, included, however, in its repeals the whole of the Summary Jurisdiction Act, 1879, except for certain provisions, of which section 19 was not one. Section 83 of the new Act, giving the revised statement of rights of appeal to quarter sessions, is confined in its operation to convictions, sentences and bastardy matters. The definition of " sentence " in section 126 " does not include a committal . . . for failure to do or abstain from doing anything required to be done or left undone."

It seems, therefore, that the previous right of appeal in certain circumstances against imprisonment for disobedience of a magistrates' court's order has ceased to exist, if one cannot look beyond the wording of the Magistrates' Courts Act, 1952. This statute was a consolidating enactment, and, prior to the Consolidation of Enactments (Procedure) Act, 1949, such a statute would not have been expected to make new law, whether by addition or subtraction. The Act of 1949, however, permitted "consolidation to be facilitated" by "corrections and minor improvements" in the existing law. The Lord Chancellor may put forward proposals for these to be made, and a committee of both Houses of Parliament may be set up to consider the proposals. Section 1 (5) of the Act lays down that "corrections and minor improvements" shall not be approved by either the Lord Chancellor or a joint committee unless satisfied that they "do not effect any changes in the existing law of such importance that they ought, in their or his opinion, to be separately enacted by Parliament." Section 2 of the Act defines "corrections and minor improvements" as "amendments of which the effect is confined to resolving ambiguities, removing doubts, bringing obsolete provisions into conformity with modern practice, or removing unnecessary provisions or anomalies which are not of substantial importance, and amendments designed to facilitate improvement in the form or manner in which the law is stated. . . ."

In view of these provisions of the Consolidation of Enactments (Procedure) Act, 1949, it is difficult to understand how section 19 of the Summary Jurisdiction Act, 1879, came to be repealed without its effect being carried over into some provision of the consolidating statute. It seems unlikely that the abolition of a right of appeal would be considered to be an amendment of the law "not of substantial importance." This particular right of appeal could be invoked in a case where imprisonment had been ordered for disobedience to an order relating to the custody of a child. Proceedings of this kind often raise difficult issues and invariably arouse strong feelings; it is eminently desirable, therefore, that an opportunity for a reconsideration of the adjudication by another tribunal should exist.

If the repeal of section 19 of the Summary Jurisdiction Act, 1879, was *per incuriam,* is there now any possibility of restoring the former position? Section 1 (7) of the Act of 1949 reads: "When a Bill has been reported by the joint committee . . . then, for the purposes of any further proceedings in Parliament relating to the Bill, *but not for any other purpose,* the corrections and minor improvements approved by the joint committee with the concurrence of the Lord Chancellor and of the Speaker shall be deemed to have become law in like manner as if they had been made by an Act." Could this provision be used to go behind the terms of a consolidating enactment and argue, in effect, that it was, in some particular respect, outside the powers of the law relating to consolidation? This question may some day have to be decided in the courts if some person committed for disobedience of a magistrates' court's order is insistent on asserting a right to appeal to quarter sessions. [A. E. Jones.]

Case and Comment

The reports of cases to which initials are appended hereunder have been specially prepared for *The Criminal Law Review* by the following reporters:—

HENRY PALMER, *Barrister-at-Law.*
J. D. PENNINGTON, *Barrister-at-Law.*

Bail—*Prisoner with bad record—considerations for magistrates.*

R. *v.* PEGG [1] (Court of Criminal Appeal: Lord Goddard C.J., Ormerod and Gorman JJ.: March 30, 1955).

E. was convicted on January 5, 1955, at Derby County Sessions and was sentenced to eight years' preventive detention. On January 12 he was sentenced by the learned Recorder of Derby for an offence committed by him when on bail. E. had been granted bail by the county magistrates in Derby and had committed four other serious offences while on bail. On application for leave to appeal against sentence to the Court of Criminal Appeal:—

Held, dismissing the application, that there was no ground for interfering with the sentence passed on E., but the court desired to point out to justices that it was not right to grant bail when committing a prisoner for trial in cases where it is not suggested that the prisoner has any answer to the charge and where, as in this case, the prisoner has a very bad record. E. had escaped from Borstal, and from Leicester prison ; he had had a sentence of penal servitude and sentences of imprisonment of twelve months. The justices were wrong to grant bail in this case, because E. was given the opportunity of committing further offences while on bail. [H. P.]

COMMENTARY. See Archbold, 33rd ed., 72; Stone, 86th ed., 47, note (*h*).

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[1] The applicants did not appear and were not represented. The Crown was not represented.

Extradition—*Procedure—documents considered by magistrate in private*

R. *v.* METROPOLITAN POLICE COMMISSIONER, *ex p.* SAVUNDRANAYAN[2] (Q.B., Divisional Court: Lord Goddard C.J., Ormerod and Gorman JJ.: March 21, 1955) (*The Times*, March 22, 1955).

S., against whom were charges of forgery and obtaining money by false pretences, was committed for extradition to Belgium by the Bow Street magistrate. On an application by S. for a writ of *habeas corpus*, it was argued on his behalf that, apart from certain documents, the evidence did not establish that S. took any part in the transactions for which the proceedings for extradition had been started and that since the Magistrates' Courts Act, 1952, required all evidence to be on oath, the consideration of a number of documents by the magistrate in private was a departure from ordinary criminal procedure and the documents were inadmissible. *Held*, discharging the motion, that the practice at Bow Street whereby the magistrate received the order and documents from the Home Office and, having read the documents, decided whether there was sufficient evidence to allow the case to proceed, was in accordance with the provisions of the Extradition Act, 1870, which was a code of its own. The only relevance of the Magistrates' Courts Act, 1952, was when the magistrate proceeded to take evidence in court. [J. D. P.]

COMMENTARY. See Stone, 86th ed., 134, note (*q*).

Food and Drugs—*Bread—Deficiency in weight of loaves*

TRICKERS (CONFECTIONERS) *v.* BARNES[3] (Q.B., Divisional Court: Lord Goddard C.J., Ormerod and Gorman JJ.: March 10, 1955) ([1955] 1 W.L.R. 372; [1955] 1 All E.R. 803).

An inspector of weights and measures entered the defendants' retail shop, weighed 24 of the 14 oz. loaves which were in the shop for sale, and found that all the loaves weighed were deficient in weight by varying amounts. Seven informations were preferred against the defendants, each alleging that they had in their possession for sale at their shop a certain loaf of bread its weight not being 14 oz. or a multiple of 14 oz., contrary to article 3 (1) of the Bread Order, 1953. The stipendiary magistrate convicted the defendants. On appeal:—

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[2] For the applicant: *Gilbert Paull Q.C., J. C. G. Burge, Sirimevan Amerasinghe* and *M. Mann* (instructed by Lucien Fior). For the Police Commissioner: *Maxwell Turner* (instructed by the Director of Public Prosecutions). For the Belgian Government: *Geoffrey Lawrence Q.C., Jeremy Hutchinson* (instructed by Henry Hilbery & Son). *Amici curiae*: *Sir H. Hylton-Foster Q.C., S.-G., Maxwell Turner* (instructed by Treasury Solicitor).

[3] For the defendants: *S. M. Noakes* (instructed by Rhys Roberts & Co., for Hornby, Baker, Jones & Wood, Newport). For the prosecution: *A. P. Roberts* (instructed by Theodore Goddard & Co., for Town Clerk, Cardiff).

Held, allowing the appeal, (1) that the magistrate was entitled to convict on an information relating to a single loaf since the variation in weight was not inconsiderable within the meaning of article 3 (2) (*a*) of the Order of 1953; (2) that in considering whether there was a deficiency of weight in wrapped loaves the wrapping should be ignored; but (3) applying *McIntyre & Son* v. *Laird,* 1943 S.C.(J.) 96, although there was no evidence that the deficiency was due to a bona fide mistake or accident or other causes beyond the defendants' control or that all reasonable precautions had been taken and due diligence exercised, the deficiency was due to the action of some person over whom the defendants had no control within the meaning of article 3 (2) (*b*) and therefore they were entitled to be discharged from the prosecution. [J. D. P.]

COMMENTARY. The Bread Order, 1953 (S.I. No. 1283), art. 3 (2), provides: "Where in any proceedings a person is charged with a contravention of this article in respect of the weight of any bread—(*a*) the court shall disregard any inconsiderable variation in the weight of a single loaf or roll of bread, and shall have regard to the average weight of a reasonable number of loaves . . . of the same kind (if any) sold by the person so charged, or in his possession for the purpose of sale, on the same occasion. . . ."

See Stone, 86th ed., 2412, note (*a*).

Food and Drugs—*Slaughterhouses—licence—premises used on one occasion to slaughter sheep*

EAST RETFORD DISTRICT COUNCIL *v.* HORNE [4] (Q.B., Divisional Court: Lord Goddard C.J., Ormerod and Gorman JJ.: March 10, 1955).

In 1946 H., a butcher, became the occupier of premises which prior to 1940 had been used and registered as a butcher's shop and slaughterhouse, and from 1940 to 1946 had been used as a butcher's shop only. On August 10, 1954, H. slaughtered five sheep the flesh of which was intended for human consumption on the premises.

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[4] For the appellants: *Peter Bristow* (Patersons, Snow & Co., for Mee & Co., Retford). The respondent did not appear and was not represented.

Apart from that occasion there was no evidence that the premises had been used for that purpose since 1940. H. was charged with using the premises as a slaughterhouse, he not being the holder of a licence granted by the local authority authorising him to keep those premises as a slaughterhouse, contrary to section 57 of the Food and Drugs Act, 1938. H., relying on *Perrins* v. *Smith* [1946] K.B. 90, contended that in order to prove that the premises were used as a slaughterhouse it must be proved that they were used in connection with the business of slaughtering animals, and that there was an habitual user; the killing of animals on one occasion did not constitute the using of the premises as a slaughterhouse. The justices considered that it had not been proved that the premises were used as a slaughterhouse and they dismissed the charge. The local authority appealed.

Held, allowing the appeal, that since the definition of slaughterhouse in section 100 of the Food and Drugs Act, 1938, had been repealed by the Slaughterhouses Act, 1954, the decision in *Perrins* v. *Smith* did not affect the present case. The definition now applicable was that contained in section 6 (1) of the Act of 1954 whereby a place in which animals were slaughtered for sale for human consumption at once became a slaughterhouse. Section 57 (1) of the Food and Drugs Act, 1938, therefore, must be read: " It shall not be lawful for the occupier of any premises to use them as a place for slaughtering animals the flesh of which is intended for sale for human consumption " and, as that was what H. had done, he was guilty of the offence charged.

[Reported by Miss J. F. Lamb, *Barrister-at-Law*.]

COMMENTARY. The Slaughterhouses Act, 1954, s. 6 (1), provides: " ' Slaughterhouse ' means a place for slaughtering animals the flesh of which is intended for sale for human consumption. . . ."

See Stone, 86th ed., 917.

Infants—*Imprisonment—sentence for driving while disqualified*

DAVIDSON-HOUSTON *v.* LANNING[5] (Q.B., Divisional Court: Lord Goddard C.J., Ormerod and Gorman JJ.: March 9, 1955).

The appellant, aged twenty, pleaded Guilty to (1) taking away a motor-car without the owner's consent; (2) using the car when uninsured; and (3) driving the car while disqualified. The appellant had a number of previous convictions for motoring offences.

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[5] For the appellant: *J. T. Molony* (instructed by Corbin, Greener & Cook, for Lock, Reed & Lock, Dorchester). For the respondent: *S. A. Martin* (instructed by Walters & Hart).

It was contended on his behalf that section 17 (2) of the Criminal Justice Act, 1948, which prohibits the imposition of imprisonment on a person under twenty-one years of age unless the court is of opinion that no other method of dealing with him is appropriate, superseded section 7 (4) of the Road Traffic Act, 1930, which imposes a sentence of imprisonment for driving while disqualified and that the justices were not required to pass a sentence of imprisonment in respect of an offence under that section. The justices sentenced the appellant to a fine of £3 on the first charge, one month's imprisonment and twelve months' disqualification on the second charge and three months' imprisonment on the third to run concurrently. On appeal:—

Held, dismissing the appeal, section 17 (2) of the Act of 1948 did not supersede section 7 (4) and, in the circumstances, there was no other course open to the justices but to send the appellant to prison. [J. D. P.]

COMMENTARY. The Road Traffic Act, 1930, s. 7 (4), provides: " If any person who . . . is disqualified for holding . . . a licence . . . while he is so disqualified drives a motor vehicle . . . that person shall be liable on summary conviction to imprisonment for a term not exceeding six months or if the court think that, having regard to the special circumstances of the case, a fine would be an adequate punishment . . . to a fine not exceeding £50."

" Special circumstances " mean circumstances peculiar to the offence and not to the person charged: *Lines* v. *Hersom* [1951] 2 K.B. 682.

The Criminal Justice Act, 1948, s. 17 (2), provides: " No court shall impose imprisonment on a person under twenty-one years of age unless the court is of opinion that no other method of dealing with him is appropriate."

See Archbold, 33rd ed., 236; Stone, 86th ed., 169, 2034.

Larceny—*Intention—evidence*

MCERLAINE *v.* JEFFREY [6] (Lancashire Quarter Sessions: Judge Fraser-Harrison, Deputy Chairman: March 22, 1955).

The appellant was convicted before the magistrates of stealing two identical green sports pedal cycles at different times. Whilst he was being interrogated at the police station concerning the first cycle, which was recovered, a constable went outside the station and there saw the second cycle. He took the makers' number and later saw the appellant take possession of it and ride away. Soon afterwards it was found outside club premises where the first cycle had been stolen. The second cycle was never claimed. In a statement to the police the appellant said, "I have never seen that cycle before; it is not mine." On appeal:—

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[6] The appellant appeared in person. For the respondent: *Anthony Edmondson* (instructed by the Town Clerk, Warrington).

Held that the appellant had been rightly convicted of the theft of the first cycle, but the appeal against the second conviction was allowed there being insufficient evidence to show an intention permanently to deprive the owner of the cycle.

[Reported by K. B. Edwards, *Barrister-at-Law*.]

COMMENTARY. See Archbold, 33rd ed., 540.

London—*Port of London Authority—driving while uninsured on road within docks.* See BUCHANAN *v.* MOTOR INSURERS' BUREAU, p. 321, below.

Magistrates' Courts—*Communications between magistrates or their clerks and Lord Chancellor's department—privilege*

IWI *v.* MONTESOLE [7] (Queen's Bench Division: Donovan J.: March 7–14, 1955) (*The Times*, March 8–15, 1955).

In a libel action by a justice of the peace against the chairman of the bench, the alleged libels were said to be contained in minutes, resolutions or notes of meetings of the bench. The plaintiff sought to put in evidence communications, whether oral or in writing, between the Lord Chancellor's department and his advisory committee, and communications between them and the plaintiff, the defendant, or any member of the bench. The Lord Chancellor, by affidavit, claimed that such communications were privileged.

Held, that if highly confidential communications which passed between magistrates or their chairman or clerk and the Lord Chancellor regarding the appointment and behaviour of magistrates could be canvassed in private litigation great damage might be done to the public interest; accordingly the Lord Chancellor had properly claimed privilege in relation to the documents specified. [J. D. P.]

COMMENTARY. On the general question of Crown privilege see "Evidence excluded by considerations of State interest," by J. E. S. Simon Q.C. [1955] C.L.J. 62.

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[7] The plaintiff appeared in person. For the Lord Chancellor: *Sir R. Manningham-Buller Q.C., A.-G., Rodger Winn* (instructed by Treasury Solicitor). For the defendant: *Cyril Salmon Q.C., Helenus Milmo* (instructed by Solicitor, Middlesex County Council).

Magistrates' Courts—*Summons—accused not resident in county—offence committed elsewhere*

R. *v.* Blandford; R. v. Freestone [8] (Court of Criminal Appeal: Lord Goddard C.J., Ormerod and Gorman JJ.: February 28, March 7, 1955) ([1955] 1 W.L.R. 331; [1955] 1 All E.R. 681).

F. and B. had been separately indicted and convicted at Montgomery Quarter Sessions for receiving stolen property. Neither of the accused had received the property in Montgomeryshire, nor did either of them reside in that county. On appeal the question arose whether the Montgomery Quarter Sessions had jurisdiction to deal with the offences and also whether the summonses had been lawfully issued in that county. It was stated at the hearing of the appeal that F. and B. were summoned in Montgomeryshire because other persons resident in that county were summoned to appear at the same court also charged with receiving in Montgomeryshire similar property stolen from the same prosecutors.

Held. dismissing the appeals, that under section 1 (2) (*b*) of the Magistrates' Courts Act, 1952, magistrates were given a discretion to issue a summons or a warrant in cases where the person charged did not reside in the jurisdiction of the court nor had the offences been committed there, provided that there was some connection between the offence charged against the other person and that in respect of which the summons or warrant was issued. In the present case there was a sufficient connection. The fact that persons resident within the jurisdiction are being charged with offences so similar or closely connected that the witnesses for the prosecution or some of them will be the same in both cases may be a good reason for the discretion to be exercised. Another matter which may be taken into consideration is that, where the offences are similar or closely connected, uniformity in treatment of the accused persons may be desirable. A justice exercising his discretion under section 1 (2) (*b*) should, however, bear in mind that it is not only the interests of the prosecution which are at stake, but also the interests of the defendants. To bring a man, as in the present case, from Hampshire to North Wales, was a very serious matter and might put very great difficulties in the way of the preparation and presentment of his defence. In the present case, the section empowered the summonses to be issued and the defendants were, accordingly, lawfully committed to Montgomery Quarter Sessions. There was no doubt that the quarter sessions had jurisdiction to deal with the offences by virtue of section 11 (1) of the Criminal Justice Act, 1925, provided that the summonses were lawfully issued. [H. P.]

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[8] For the appellant Blandford: *P. L. W. Owen* (instructed by Churchill, Clapham & Co., for Richard George & Jenkins, Newtown). For the appellant Freestone: *H. G. Talbot* (instructed by Kingsford, Dorman & Co., for Argyle & Sons, Tamworth). For the Crown: *Emlyn Hooson* (instructed by Milwyn Jenkins & Jenkins, Newtown).

COMMENTARY. The Magistrates' Courts Act, 1952, s. 1 (2) (*b*), provides that a justice may issue a summons or warrant "if it appears to the justice necessary or expedient, with a view to the better administration of justice, that the person charged should be tried jointly with, or in the same place as, some other person who is charged with an offence, and who is in custody, or is being or is to be proceeded against, within the county or borough."

The Criminal Justice Act, 1925, s. 11 (1), provides: "A person charged with any indictable offence may be proceeded against, indicted, tried and punished in any county or place in which he . . . has appeared in answer to a summons lawfully issued charging the offence. . . ."

See Archbold, 33rd ed., 38; Stone, 86th ed., 42, 152.

Murder—*Running down by a car—intention of driver and passenger*

R. *v.* MURTAGH AND KENNEDY [9] (Manchester Assizes: Glyn-Jones J.: March 21, 1955).

The prisoners were charged with the murder of a man who was killed outside his house by a car in which the prisoners were travelling mounting the pavement and ramming the deceased against a wall. Evidence was given that the same night there had been a vigorous fight between the first prisoner and the deceased and that the same car had twice previously driven past the deceased's home and on each occasion incidents had occurred. For the defence it was argued that the prisoners, seeing the deceased standing in a threatening attitude with a coal grid in his hand, ducked their heads, so that the car swerved and mounted the pavement, accidentally striking the deceased.

Summing up, the judge said: (i) If the car were deliberately driven at a group of people or any of them with intent to cause death or grievous bodily harm and one of them was killed the killing was murder. If the passenger shared the driver's intent, he shared his guilt of murder. (ii) If the car were wilfully driven on to the pavement, not with the intention of hitting anybody, but with intent to frighten, annoy or terrorise others, the killing would be manslaughter. If in this case the passenger shared the driver's intention, he might be convicted of manslaughter. (iii) If the driver intended the car to hit and the passenger intended it to frighten, the driver could be convicted of murder and the passenger of manslaughter. (iv) If the driver, with no intent to hit, were guilty of such wanton recklessness as to justify a conviction of manslaughter, the jury would not be justified in convicting the passenger of sharing the intent that the car should be driven dangerously, and he should be acquitted. (v) If the prisoners saw the deceased standing nearby to throw the coal grid and it was their "ducking" that caused the car inadvertently to swerve on to the pavement, both should be acquitted.

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[9] For the prosecution: *D. Karmel Q.C., R. H. Mais* (instructed by Director of Public Prosecutions). For Murtagh: *Miss Rose Heilbron Q.C., S. R. Baker* (instructed by Julian S. Goldstone, Manchester). For Kennedy: *J. di V. Nahum Q.C., P. Astley* (instructed by J. P. Morley, Salford).

The jury found Murtagh guilty of murder and Kennedy guilty of manslaughter.

[Reported by K. B. Edwards, *Barrister-at-Law*.]

COMMENTARY. See Archbold, 33rd ed., 923.

Offences Against the Person—*Bodily harm—intent*

R. *v*. CHARLSON[10] (Chester Assizes: Barry J.: February 11, 1955) ([1955] 1 W.L.R. 317; [1955] 1 All E.R. 859).

C., who lived in a house, the back room windows of which overlooked a river two feet deep, called his ten-year-old son into the back room, telling him that there was a rat standing on a stone in the river. When the boy went to the window, C. struck the boy on the head and. when he tried to defend himself, picked him up and threw him out of the window. The boy fell twenty-five feet into the river and suffered severe injuries. C. was charged with causing grievous bodily harm with intent to murder, causing grievous body harm with intent to cause grievous bodily harm, and unlawful wounding. When he was interviewed by the police he appeared to be in a very distressed and bewildered state. He admitted that he struck the boy, but said that he did not know why he had done so. Medical evidence was given pointing to the possibility that C. was suffering from a cerebral tumour, a condition in which a patient is liable to an outburst of impulsive violence, quite motiveless and over which he has no control. No plea of insanity was put forward as a defence.

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[10] For the Crown: *H. Emlyn Hooson* (instructed by Solicitor, Cheshire County Council). For the accused: *D. Eifion Evans Q.C., Philip Owen* (instructed by Davis, Hope & Furniss, Glossop).

Barry J. directed the jury that if when C. struck his son he was acting as an automaton without any knowledge of or control over his acts and was in a condition similar to that of a person in an epileptic fit, then no responsibility rested on him and the proper verdict was Not Guilty of all three charges.

C. was found Not Guilty of all three charges. [J. D. P.]

COMMENTARY. See Archbold, 33rd ed., 1000, 1006.

Police—*Road traffic offences—driving a car without a licence—onus of proof.* See JOHN *v.* HUMPHREYS, p. 320, below.

Road Traffic—*Accident—failure to stop or to report it*

BUTLER *v.* WHITTAKER[11] (Bedfordshire Quarter Sessions: C. L. Henderson, Q.C., Chairman: March 17, 1955).

The appellant was convicted of failing to stop after an accident by which injury was caused to an animal and of having failed to report an accident, contrary to section 22 of the Road Traffic Act, 1930. He was driving his van through a herd of cows, which were being driven in the same direction as he was going and one cow ran round behind the van and along its near side; it brushed against the nearside wing, then ran on in front of the van. The appellant heard " a very slight knock " but did not think any injury had been caused to the animal, so drove on. Later the cow's right hind leg began to swell and a veterinary surgeon found that it had a severe injury, consistent with its having been struck by a motor-vehicle. On appeal:—

Held, allowing the appeal, that the duties imposed by section 22 to stop and to report an accident did not arise unless the accident caused damage or injury to the animal. The respondent had to show not only that the appellant knew there had been an accident, but also that he knew, or that the circumstances were such that it could be inferred that a reasonable man would know, that injury had been caused to the cow. In the circumstances of the present case such knowledge could not be inferred. The court refused the appellant's application for costs because whatever might have been his legal duty a prudent driver would have stopped to assure himself that no injury had in fact been caused.

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[11] For the appellant: *T. H. K. Berry* (instructed by Burgess & Chesher, Bedford). For the respondent: *Niall MacDermot* (instructed by Poole & Co., Bedford).

[Reported by J. P. Culpin, *Solicitor*.]

COMMENTARY. In *Harding* v. *Price* [1948] 1 K.B. 695, it was held that while under section 22 the prosecution do not have to prove that the driver knew that an accident had occurred, the driver may set up and prove lack of knowledge as a defence.

See Stone, 86th ed., 2053.

Road Traffic—*Dangerous driving—driving while asleep*

HENDERSON *v.* JONES [12] (Q.B., Divisional Court: Lord Goddard C.J., Ormerod and Gorman JJ.: March 7, 1955) (*The Times*, March 8, 1955).

A motorist, driving a car along a road, saw the defendant's car about 300 yards away approaching him on its correct side at about 30 m.p.h. When about 90 yards away, it went over on to his side of the road and headed straight for him. He swerved on to the grass verge and was struck by the off side of the defendant's car. The defendant said: " I have no excuse. I must have fallen asleep." On an information preferred against her for driving without due care and attention, the justices, having been referred to *Kay* v. *Butterworth* (1945) 110 J.P. 75 and *Edwards* v. *Clarke*, an unreported decision summarised in (1951) J.P.J. 426, were of opinion that, although they could not accept the defendant's contention that she was not " driving " because she was asleep, as the authorities appeared to conflict they should dismiss the information. On appeal by the prosecutor :—

Held, allowing the appeal, that a person who is driving while asleep is at least driving without due care and attention and might be held to be driving dangerously. *Edwards* v. *Clarke*, which was decided on its own special facts, is no authority for the contrary view. [J. D. P.]

COMMENTARY. In *Kay* v. *Butterworth* a man who fell asleep while driving was found guilty of driving without due care and attention, it being held that it was his duty to stop as soon as he felt himself becoming drowsy.

See Stone, 86th ed., 2042, 2044.

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[12] For the prosecution: *Robert Hughes* (instructed by Gregory, Rowcliffe & Co., for Hugh Carswell, Chester). The defendant did not appear and was not represented.

Road Traffic—*Dangerous driving—power of Divisional Court to review justices' finding*

MARSON *v.* THOMPSON [13] (Q.B., Divisional Court: Lord Goddard C.J., Ormerod and Gorman JJ.: March 7, 1955) (*The Times,* March 8, 1955).

The defendant was driving a double-deck omnibus along a road when another omnibus in front stopped. The defendant drove his omnibus past the leading vehicle going within two or three feet of his off side kerb at about 15 to 20 m.p.h. The driver of the stationary omnibus had signalled to the defendant not to overtake, but the defendant failed to observe the signal. At the time of overtaking, three pedal cyclists were approaching some 20 to 25 yards away all on their near side of the road. They pulled farther into their near side but one of them, in doing so, fell off his bicycle into the path of the defendant's vehicle, was carried some 40 ft. along the road, and received fatal injuries. On an information against the defendant for dangerous driving, the justices dismissed the information. On appeal by the prosecutor:—

Held, allowing the appeal, that it was a clear case of cutting in, and the defendant was lucky not to be charged with manslaughter; the Divisional Court, on the authority of *Bracegirdle* v. *Oxley* [1947] K.B. 349, had power to review cases of dangerous driving where the finding was perverse, and in the present case, there was no evidence to support the justices' finding that the defendant had not driven dangerously. [J. D. P.]

COMMENTARY. In *Bracegirdle* v. *Oxley,* Lord Goddard C.J. described a perverse decision as one ". . . to which no reasonable bench of magistrates, applying their minds to proper considerations and giving themselves proper directions, could come," and said: "then this court can interfere, because the position is exactly the same as if the magistrates had come to a decision of fact without evidence to support it."

Road Traffic—*Disqualification—date from which it runs*

R. *v.* GRAHAM [14] (Court of Criminal Appeal: Lord Goddard C.J., Ormerod and Gorman JJ.: March 28, 1955).

In March, 1942, G. had been convicted of certain offences under the Road Traffic Acts and disqualified from driving for ten years. On July 11, 1946, he had been convicted of driving under the influence of drink and driving when disqualified. He was sentenced for these offences to six months' imprisonment and was disqualified for ten years, the disqualification to commence on his release from prison. On December 31, 1954, G. was convicted, *inter alia,* of making a false statement that he was not disqualified, obtaining a licence when disqualified and driving when disqualified and was sentenced to one year's imprisonment in addition to a period of imprisonment and disqualification for life imposed in respect of other charges. On appeal to the Court of Criminal Appeal against conviction:—

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[13] For the prosecution: *H. C. Scott* (instructed by Cummings, Marchant & Ashton, for R. C. Linney, Wakefield). For the defendant: *M. R. Nicholas* (instructed by Pattinson & Brewer, for Green, Williamson & Way, Wakefield).

[14] For the appellant: *Peter Taylor* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *R. A. Percy* (instructed by Cuthbertson & Co., Blyth).

Held, allowing the appeal, that a period of disqualification imposed by any court must date from conviction. It followed that G. had been wrongly convicted of making a false statement that he was not disqualified and of obtaining a licence and driving when disqualified. It was a defence for G. to say: "the order disqualifying me was bad and, therefore, I am not liable to conviction." The convictions on those counts would be quashed. [H. P.]

Road Traffic—*Disqualification—imprisonment of infant driving while disqualified.* See DAVIDSON-HOUSTON *v.* LANNING, p. 311, above.

Road Traffic—*Driving a car without a licence—onus of proof*

JOHN *v.* HUMPHREYS[15] (Q.B., Divisional Court: Lord Goddard C.J., Ormerod and Gorman JJ.: March 10, 1955) ([1955] 1 W.L.R. 325; [1955] 1 All E.R. 793).

H., the owner of a motor-car, wrote a letter to the justices pleading guilty to a summons for driving the car without a licence, contrary to section 4 (1) of the Road Traffic Act, 1930. In the circumstances, the only evidence called by the prosecution was that of a police constable who said that he had seen H. driving the car, it being contended that section 4 constituted an absolute prohibition against driving a car without a licence and that, having proved that H. was the driver on the occasion in question, the burden of proving that he was the holder of a licence was on H. The justices refused to convict in the absence of evidence that H. did not hold a licence. On appeal by the prosecutor:—

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[15] For the prosecution: *Peter Lewis* (instructed by Turner & Evans, for John Q. Clayton & Co., Luton). The defendant did not appear and was not represented.

Held, allowing the appeal, that, although the justices were right, as the law was at present, in ignoring H.'s letter containing the plea of guilty, applying *R.* v. *Oliver* [1944] K.B. 68, where an Act of Parliament provides that a person shall not do a certain thing unless he has a licence, the onus is always on him to prove that he has a licence. Accordingly, in the present case, there being evidence that an offence had been committed, in the absence of proof by H. that he was the holder of a licence the justices were bound to convict.

Per Lord Goddard C.J.: In theory a police officer who sees a car being driven in the street can always summon the driver and leave it to him to prove that he has a licence, but, of course, it is not contemplated that police officers would act in such a way. [J. D. P.]

COMMENTARY. See Archbold, 33rd ed., 367; Stone, 86th ed., 95, 332, 2027.

Road Traffic—*Meaning of road—road within Port of London Authority premises*

BUCHANAN *v.* MOTOR INSURERS' BUREAU[16] (Queen's Bench Division: McNair J.: November 15, 1954) ([1955] 1 All E.R. 607).

The plaintiff was awarded £2,064 damages against a lorry driver for injuries sustained in December, 1949, in an accident on a road in the London Docks forming part of the premises of the Port of London Authority. Passes were required by persons entering the dock area and the P.L.A. police had instructions to refuse admission to any unauthorised person. At the time of the accident the lorry driver was not insured as required by the Road Traffic Act, 1930, s. 35. The damages not having been paid, the plaintiff sought to recover them from the defendants, who admitted that, if the lorry driver ought to have been insured under section 35, and was unable to meet the judgment through want of means, they were liable for the sum awarded. They contended, however, that the road where the accident happened was not a "road" within section 121 (1) of the Act of 1930.

Held, applying *Harrison* v. *Hill,* 1932 S.C.(J.) 13, that the place where the accident happened was not a road to which the general public had access either as a matter of legal right or by tolerance of the Port of London Authority and, therefore, was not a "road" within section 121 (1). Accordingly, at the time of the accident the lorry driver was not required to be insured, and the plaintiff's claim failed. [J. D. P.]

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[16] For the plaintiff: *R. Castle-Miller* (instructed by Darracotts). For the defendants: *Ryder Richardson Q.C., A. H. Head* (instructed by Hair & Co.).

COMMENTARY. "Road" is defined in the Road Traffic Act, 1930, s. 121 (1), as "any highway and any other road to which the public has access," and since July 12, 1950, the date on which the Port of London Act, 1950, came into effect, certain provisions of the Road Traffic Acts, including the requirement to insure against third party risks, have effect as if "road" included a dock road.

In *Harrison* v. *Hill* the Lord Justice-General, Lord Clyde, said: ". . . when the statute speaks of the public having 'access' to the road, what is meant is . . . that the public actually and legally enjoys access to it. . . . There must be . . . walking or driving by the public on the road, and such walking or driving must be lawfully performed—that is to say, must be permitted or allowed, either expressly or implicitly, by the person or persons to whom the road belongs."

See Stone, 86th ed., 2100; Stroud's *Judicial Dictionary*, 3rd ed., Vol. 3, 2622.

Road Traffic—*Traffic sign—wheeling bicycle across a road against traffic lights*

POLICE *v.* WETHERILL[17] (Sheffield Magistrates' Court: D. J. O'Neill, Esq., Chairman: March 17, 1955)

The defendant was charged with propelling his pedal cycle across a road while the traffic lights placed there were against him, contrary to section 49 of the Road Traffic Act, 1930. He was riding his cycle through Sheffield when he came to a road junction, where the lights were red. He stopped and dismounted. After waiting a short time he wheeled his cycle across the middle of the junction while the lights were still against him. The road was very busy at the time and several vehicles had to slow down for him. The defendant contended that he had committed no offence.

Held, section 49 applies not only to vehicles that are driven by mechanical means, but also to those wheeled on foot. The defendant was guilty and was fined 10s.

[Reported by W. H. Hopcroft, *Assistant to the Clerk to the Justices.*]

COMMENTARY. The Road Traffic Act, 1930, s. 49, provides: "Where . . . any traffic sign being a sign for regulating the movement of traffic or indicating the route to be followed by traffic . . . has been lawfully placed on or near any road . . . any person driving or propelling any vehicle who . . . (*b*) fails to conform to the indication given by the sign, shall be guilty of an offence."

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[17] The defendant was not represented.

See Stone, 86th ed., 2074.

Sentence—*Stealing of postal packet by a postman—sentence not so severe as formerly*

R. *v.* MUTCH[18] (Court of Criminal Appeal: Lord Goddard C.J., Ormerod and Gorman JJ.: February 14, 1955) (*The Times*, February 15, 1955).

M., a postman, was convicted of stealing a postal packet in course of transmission by post. Four other offences were taken into consideration. He was sentenced to two years' imprisonment, and appealed against this sentence.

Held, that a man who steals as an officer of the Post Office is now treated with little more severity than any other man who abuses the position he is in and steals, although some years ago he would have received a sentence of not less than five years' imprisonment. The court thought the sentence of two years' imprisonment passed on M. was too heavy. The total value of the cash stolen was only £10 10s. In view of M.'s previous good character, the fact that he had just married and was only twenty-one years of age, the sentence would be reduced to one of nine months' imprisonment. [H. P.]

Trial—*Summing-up—direction to jury respecting onus of proof*

R. *v.* BLACKBURN[19] (Court of Criminal Appeal: Lord Goddard C.J., Ormerod and Gorman JJ.: March 29, 1955) (*The Times Summary*, March 30, 1955).

B. was convicted on two counts of an indictment containing five counts of inducing persons to purchase shares by statements, promises and forecasts which he knew to be misleading or deceptive. On appeal against conviction to the Court of Criminal Appeal B. contended, *inter alia*, that the trial judge had failed properly to direct the jury on the question of the onus of proof and that, in particular, the learned judge had not made use of the word " sure " nor had he told the jury that they should give the prisoner " the benefit of the doubt."

Held, dismissing the appeal, that it is for the judge to direct the jury on the question of the burden of proof and to make quite clear to the jury that it is for the prosecution to establish the guilt of the prisoner. But there is no particular form of words which is sacrosanct, the absence of which necessarily means that the summing-up is wrong. In the present case the learned judge had properly made clear to the jury that the burden of proof was on the prosecution and that if that burden of proof had not been discharged then the prisoner was entitled as of law to be acquitted. Having considered this and the other submissions made to them, the court found that complaint could not properly be made against the summing-up. [H. P.]

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[18] The appellant did not appear and was not represented. The Crown was not represented.

[19] The appellant appeared in person. For the Crown: *R. E. Seaton, Mervyn Griffith-Jones* (instructed by the Director of Public Prosecutions).

COMMENTARY. See Archbold, 33rd ed., 198, 363. We shall publish further commentary on this case in a future issue.

Trial—*Summing-up—intent.* See R. *v.* CHARLSON, p. 316, above.

Venue—*Magistrates' Courts—offence not committed within the county.* See R. *v.* BLANDFORD; R. *v.* FREESTONE, p. 314, above.

Weights and Measures—*Bread—deficiency in weight of loaves.* See TRICKERS (CONFECTIONERS) *v.* BARNES, p. 309, above.

Acts and Orders

Agriculture

See MILK (SPECIAL DESIGNATIONS) (SPECIFIED AREAS) ORDER, p. 325, below.

IMPORTATION OF HAY AND STRAW ORDER, 1955 (S.I. No. 370): operative April 1, 1955. The Foreign Hay and Straw Order, 1912 (S.R. & O. No. 284), and the Orders amending it are consolidated. Esparto grass is exempted from the restrictions of the Order, and hay and straw may be imported from the Falkland Islands, Finland, Iceland and Ireland in addition to the countries contained in the previous orders.

For powers of the police, see section 71 of the Diseases of Animals Act, 1950, and for penalties for infringement, see sections 78–80.

Approved Schools

See APPROVED SCHOOLS (CONTRIBUTIONS BY EDUCATION AUTHORITIES) (SCOTLAND) REGULATIONS, p. 327, below.

Birds

WILD BIRDS (BULLFINCHES) ORDER, 1955 (S.I. No. 354): operative March 14, 1955. In a number of areas specified in the schedule to the Order bullfinches are added to the list of birds contained in Schedule II of the Protection of Birds Act, 1954 (see [1954] Crim.L.R. 638). These birds may be killed or taken and their nests or eggs seized by the owner or occupier of the land where the action is taken, persons authorised by them or by certain public bodies.

Consular Office

CONSULAR CONVENTIONS (UNITED STATES OF MEXICO) ORDER, 1955 (S.I. No. 425): operative April 1, 1955. Section 4 of the Consular Conventions Act, 1949, which restricts powers of entry in relation to consular offices, now applies to the consular offices of the United States of Mexico.

Customs and Excise

EXPORT OF GOODS (CONTROL) (AMENDMENT NO. 4) ORDER, 1955 (S.I. No. 334): operative March 9, 1955. The principal Order (S.I. No. 118 ; see [1954] Crim.L.R. 312) has been further amended.

See IMPORTATION OF HAY AND STRAW ORDER, p. 324, above.

Defence Regulations

DEFENCE REGULATIONS (ISLE OF MAN) ORDER, 1955 (S.I. No. 421): operative April 1, 1955. The following regulations of the Defence (General) Regulations (Isle of Man), 1939, are revoked: 54B, 56, 58A, 58AA, 59, 77, 80B, 82, 88, 89, 90, 94, 95, 96. Regulations 46, 93 and 104 are amended.

Food and Drugs

MILK (SPECIAL DESIGNATIONS) (SPECIFIED AREAS) ORDER, 1955 (S.I. No. 315): operative March 21, 1955. In the areas specified in the schedule to the Order special designations must be used for the purpose of all sales of milk by retail for human consumption other than catering sales.

The provisions of the Order are enforceable by the food and drugs authorities within the areas specified. For penalties for infringements see section 79 of the Food and Drugs Act, 1938.

London

The following Orders have been made prohibiting waiting in certain streets: S.I. 1955, Nos. 337 (Sevenoaks); 411 (Eynsford).

The following Orders have been made detailing prescribed routes: S.I. 1955, Nos. 335 (City of London and Stepney); 336 (St. Marylebone); 391 (Islington); 410 (City of London).

Magistrates' Courts

The following Orders altering petty sessional divisions have been made: S.I. 1955, Nos. 398 (East Suffolk); 517 (West Riding of Yorkshire).

Merchant Shipping

MERCHANT SHIPPING (SAFETY CONVENTION COUNTRIES) (VARIOUS) ORDER, 1955 (S.I. No. 427): operative March 25, 1955. The International Convention for the Safety of Life at Sea, 1948, has been accepted by Roumania and has been declared to extend to the Netherlands Antilles.

Pest Control

See IMPORTATION OF PLANTS (SCOTLAND) ORDER; IMPORTATION OF VEGETABLES (SCOTLAND) ORDER, p. 327, below.

Police

See POLICE (DISCIPLINE) (SCOTLAND) REGULATIONS, p. 327, below.

Probation

See PROBATION (SCOTLAND) AMENDMENT RULES, p. 327, below.

Revenue

EXCHANGE CONTROL (IMPORT AND EXPORT) ORDER, 1955 (S.I. No. 395): operative March 17, 1955. The No. 2 Order of 1951 (S.I. No. 995), as amended, is replaced. Travellers may now take out of the United Kingdom and the Channel Islands £10 in sterling notes and the equivalent of £25 in foreign currency notes.

As to enforcement of the Order and penalties for its infringement see Schedule 5 of the Exchange Control Act, 1947.

Salmon and Freshwater Fisheries

CORNWALL RIVER BOARD (FIXED ENGINES) ORDER, 1955 (S.I. No. 364): operative March 7, 1955. The Board is given power, subject to the approval of the Minister of Agriculture and Fisheries, to erect and work fixed engines for catching salmon and migratory trout for artificial propagation and scientific purposes. It may also place devices in inland water to catch or obstruct non-migratory trout for these purposes.

Scotland

Approved schools

APPROVED SCHOOLS (CONTRIBUTIONS BY EDUCATION AUTHORITIES) (SCOTLAND) REGULATIONS, 1955 (S.I. No. 446): operative April 1, 1955. The contribution payable by an education authority named in an approved school order to the expenses of the school managers is increased to 72s. 6d. per week.

Pest control

IMPORTATION OF PLANTS (SCOTLAND) ORDER, 1955 (S.I. No. 405): operative April 1, 1955. Previous orders are consolidated with certain amendments. The provisions are similar to those contained in the English Order (S.I. No. 81), see [1955] Crim.L.R. 196.

IMPORTATION OF VEGETABLES (SCOTLAND) ORDER, 1955 (S.I. No. 404): operative April 1, 1955. The restrictions imposed by the above Order on the importation of certain vegetables from Belgium, France and the Netherlands are modified for specified periods.

Police

POLICE (DISCIPLINE) (SCOTLAND) REGULATIONS, 1955 (S.I. No. 347): operative March 10, 1955. Provisions are made similar to those contained in the English Orders (S.I. 1954, Nos. 1687, 1688; see [1955] Crim.L.R. 128) for the suspension of a member of the police alleged to have committed a criminal offence and his payment in respect of the period of suspension on his return to duty.

Probation

PROBATION (SCOTLAND) AMENDMENT RULES, 1955 (S.I. No. 357): operative March 16, 1955. The salaries of whole-time probation officers, male principal and deputy principal probation officers are increased by between £20 and £90. The maximum salary which a temporary probation officer may receive, unless the Secretary of State otherwise decides, is raised to £8.

Seamen

MERCHANT SHIPPING (FOREIGN DESERTERS) (UNITED STATES OF MEXICO) ORDER, 1955 (S.I. No. 426): operative April 1, 1955. Section 238 of the Merchant Shipping Act, 1894, which relates to the apprehension of deserters from foreign ships, applies, subject to certain limitations, to seamen and apprentices who desert from ships registered at any port in the United States of Mexico when those ships are within the United Kingdom, any of the Channel Islands, the Isle of Man or any colony.

Letters to the Editor

Kuruma v. R.

Sir,

I have read with interest the summary of the recent decision of the Judicial Committee of the Privy Council in *Kuruma* v. *R.*, published in your March issue of *The Criminal Law Review* at page 184. The decision concerns the admissibility of evidence illegally obtained. The question for decision in the instant case was whether the evidence given by two police constables (neither of whom was of or above the rank of assistant inspector) who had stopped and searched the accused and found in his possession two rounds of ammunition, was admissible in evidence. It was contended that, the relevant regulations having provided that only a police officer of or above the rank of assistant inspector could stop and search any individual, such evidence was inadmissible in law.

The Judicial Committee of the Privy Council has ruled that such evidence, though obtained illegally, was admissible in law. It will interest readers to note that the same view has been authoritatively laid down in a decision of three judges of the Supreme Court of Ceylon in the case of *Rajapakse* v. *Fernando* (1951) 52 N.R.L. 361.

In Ceylon the rules of evidence governing the admissibility of evidence in criminal cases are in the main based on the English law of evidence, and there is special provision embodied in section 100 of the Ceylon Evidence Ordinance which states that where, in a case arising in a judicial proceeding, a question arises, which is not provided for by the Evidence Ordinance or by any other law in force, such question shall be determined in accordance with the English law of evidence obtaining in England at the time being.

The question regarding the admissibility of evidence illegally obtained became one for discussion for the first time when the Appellate Court in Ceylon, in the case of *Murin Perera* v. *Wijesinghe* (1950) 51 N.L.R. 377, held that evidence obtained by an excise officer as a result of an unlawful entry into premises was inadmissible in evidence. Nagalingam J. refused to follow the previous rulings of the Supreme Court in the cases of *Bandarawela* v. *Carolis Appu* (1926) 27 N.L.R. 401, *Silva* v. *Menikrala* (1928) 9 C.L.Rec. 78, and *Almeida* v. *Mudalihamy* (1927) 7 T.R. 54, which had ruled that evidence obtained as a result of an unlawful entry was nevertheless legally admissible evidence in law.

Nagalingam J. reiterated this view as regards the inadmissibility of evidence obtained as a result of an illegal search in two other cases, *viz., Andiris* v. *Wanasinghe* (1950) 52 N.L.R. 83, and *David Appuhamy* v. *Weerasooriya* (1950) 52 N.L.R. 87.

The main reason for this view, according to Nagalingam J., was that the provisions of the statute law which laid down certain requirements to be observed before a person was searched or premises were entered upon, would be nullified if evidence obtained as a result of an illegal search or entry was made admissible in law. He concluded by saying that the object of the legislature could only be achieved by courts refusing to take cognisance of and disregarding evidence that may have been improperly obtained as a result of an unlawful and unauthorised entry upon premises.

The question as regards the admissibility of evidence illegally obtained came up before Gratiaen J. in (1950) 52 N.L.R. 89, the case of *Caralina* v. *Excise Inspector, Matara,* and Gratiaen J., after reviewing previous Ceylon cases and also the judgments of Nagalingam J., referred to earlier, took the view that evidence obtained as a result of illegal search was nevertheless admissible in evidence. He dissented from the rulings of Nagalingam J. In the course of his judgment he says:

> "There is no provision in the Evidence Ordinance which renders a relevant fact (such as the detection of an offence) inadmissible merely because the fact has been discovered in the course of an illegal search, . . . An abuse of official power may, of course, expose the offender to a claim for damages, to certain penal consequences, and, I trust, to stern disciplinary action; moreover, in an appropriate case it would doubtless justify a court of law in viewing the evidence tendered with suspicion. But I do not see how, in the present state of the law, relevant evidence can be ruled out *ab initio* on the ground that it was obtained by improper means."

He goes further and states thus:

> "The fallacy in the appellant's submission seems to lie in some confusion between the *admissibility* of the evidence tendered and the *weight* which should be attached to such evidence when its accuracy is disputed."

In view of these conflicting decisions, the matter was referred to a bench of three judges in the case of *Rajapakse* v. *Fernando* (1951) 52 N.L.R. 361. The judges unanimously decided that evidence obtained as a result of an illegal or irregular search was admissible in law. This decision overruled the judgments of Nagalingam J. and is, therefore, in agreement with the ruling of the Judicial Committee of the Privy Council in *Kuruma* v. *R.*

Dias S.P.J., who delivered the judgment of the court, stated at p. 364:

> "The English law, which is the common law, on this point is clear: In 13 Halsbury's *Laws of England* (Hailsham ed.), pp. 533–4, the rule is stated thus: 'Although it is the duty of the court to reject evidence which is not legally evidence, the fact that evidence has been obtained improperly does not necessarily render such evidence inadmissible.'"

It was submitted at the bar that, although the Evidence Ordinance governs the questions of evidence, nevertheless it is the duty of the court to give consideration to questions of public policy to control or modify the statutory rules of evidence laid down by the Evidence Ordinance and it was, therefore, contended that the court has inherent power, when it is face to face with conduct which is contrary to public morality or fair dealing, despite the strict rules of evidence to apply to such case the principles of public policy, and to hold that the admission of that evidence would cause greater harm than its rejection and, therefore, to refuse to receive such evidence. Therefore, when a public officer makes an illegal raid or search, and thereby discovers evidence against a person, it would in strict law be admissible against the person charged, nevertheless, this rule of public policy should cause the courts to say that in such circumstances they will not receive such evidence.

Dias S.P.J. disagreed with this submission and held that a court of law could not and must not expand the law of evidence by importing into it certain grounds of public policy to control or modify the statutory rules of evidence laid down by the Evidence Ordinance. He further stated:

> " I am, therefore, unable to agree with Mr. Chitty that, over and above this, there exists a nebulous and undefined residual power in the courts to admit or reject admissible evidence brought before it by legally competent and compellable witnesses on grounds of ' public policy.' Section 100 of the Evidence Ordinance provides that in the case of any *casus omissus* we are to have recourse, not to Scottish or American law, but to the principles of the English law alone. As I have pointed out, under English law, relevant evidence which has been obtained improperly is not rendered inadmissible on that ground alone. If Mr. Chitty's contention is sound, the greatest confusion and uncertainty will be introduced into our law, and the grounds of ' public policy ' would vary according to the length of each judge's foot."

In your account of the decision of *Kuruma* v. *R.*, the Judicial Committee has stated that the test to be applied in considering whether evidence was admissible, was whether it was relevant to the matters at issue. If it was, it was admissible, and a court was not concerned how the evidence was obtained. Dias S.P.J. also uses language to the same effect when he says thus:

> "If the provisions of the Evidence Ordinance are to guide us, the evidence being relevant and having been brought before court by a legally competent and compellable witness, it cannot be shut out."

Yours faithfully,
J. PATHIRANA,
Advocate.

Kurunegala, Ceylon.

Dangerous and Careless Driving

Sir,

I derive quite an amount of pleasure from reading *The Criminal Law Review* but, I am afraid that Mr. F. G. Hails rather misses the point in his article on "Dangerous and Careless Driving" in the current issue.

It would seem that he is overlooking the fact that if the prosecution take out only one summons for dangerous driving without an alternative one for careless driving, the defendant will be able to elect for trial at Quarter Sessions and on the dismissal of this summons he could not be brought before the court again for driving without due care, although he might well be guilty of such an offence. It is, of course, well known that in summary proceedings the court is able to reduce the offence to one of careless driving, but as this course is not able to be taken at quarter sessions, obviously the only safe course for the prosecution to take is to lay two informations in the first instance.

Perhaps it would be advisable now to correct the mistaken impression that Mr. Hails's article is likely to give, as the issue of two summonses is certainly policy in all cases of dangerous driving.

Yours faithfully,
ARTHUR EXTON,
Clerk to the Justices.

Derby.

Books and Periodicals

Reviews:

Handbuch der Kriminalistik. Eighth and ninth parts of the Handbuchs für Untersuchungsrichter als System der Kriminalistik. By the late Dr. Hans Gross. Newly prepared and enlarged by Professor Dr. Ernst Seelig. Berlin: J. Schweitzer Verlag. 1954. 146 pp.

This is the third, and final, instalment of the second volume of the new edition of this famous work. The first instalment was published in 1944, the second in 1951. Dactyloscopy, foot-prints and blood-stains are the principal subjects treated in the present instalment. The material has been brought up to date by the editor, Professor Seelig—Graz and Saarbrucken—whose encyclopaedic knowledge of the subject is well known. Not only recent German and Austrian literature has been noted, but occasionally also English material such as, for example, the exceptionally comprehensive finger-printing carried out in the Blackburn murder case, 1948 (Trial of Peter Griffiths, Notable British Trials Series, Vol. 73). It is, of course, impossible on the less than sixty pages devoted to dactyloscopy to deal with all the details of this highly complicated technique, but occasionally, such as on the interesting question of the similarity of the finger-prints of one-egged twins (p. 376), one might have wished for slightly more information. The thirty-five photographic tables are excellent.

H. M.

Trial of Craig and Bentley. Notable British Trials Series, Vol. 81. Edited by H. Montgomery Hyde, M.P. London: William Hodge & Co., Ltd. 1954. xi and 209 and (appendices) 55 pp. (no index). (15s. net.)

The eighty-first volume in the Notable British Trials Series deals with the trial of two young men who, on the night of November 2, 1952, became involved in a roof-top gun-battle with police officers, in the course of which one officer, P.C. Miles, was shot through the forehead by Craig and killed instantly, and another officer was injured. Both youths were convicted of murder at the Old Bailey, Bentley being sentenced to death and Craig to prison detention on account of his age. The case aroused more than usual public interest and controversy mainly on account of the fact that Craig, the undoubted ringleader in the enterprise and whose hand was directly responsible for P.C. Miles's murder, was sentenced to prison detention merely, whereas Bentley was sentenced to death and duly executed. At the trial much turned on the question whether or not Bentley, who had been apprehended prior to the murder, had encouraged his companion in the fight, and here in this book one can read the evidence from the transcript together with the arguments of counsel and the judge's summing-up, in order to judge for oneself the rights and wrongs of the affair. But the volume is much more than a mere reproduction of the transcript of the evidence given at the trial. The learned editor, H. Montgomery Hyde, M.P., has written a splendid introduction dealing with many of the surrounding circumstances including many of the arguments for and against the suggested reforms relating to the criminal liability of accomplices. The appendices include a report of the debate in the House of Commons on the eve of Bentley's execution, an extract from the Report of the Royal Commission on Capital Punishment and a newspaper report describing the proceedings before Hilbery J. at the Old Bailey on October 30, 1952, when Craig's brother was sentenced to twelve years' imprisonment for armed robbery. It remains only to say that this new volume more than maintains the high standard set by its predecessors in this excellent series.

HENRY PALMER.

Brothers in Law. By Henry Cecil. London: Michael Joseph, Ltd. 1955. 222 pp. (10s. 6d. net.)

This is a fictional account of the experiences of a young man in his first year at the Bar. The author, a county court judge, is at his best in depicting, in humorous fashion, life in chambers and in court, and the legal background is drawn with a sure hand. The plot is tenuous, involving the amorous relationship of a somewhat priggish hero with two young women with solicitor connections, and the character drawing generally is conventional and rather weak. Some readers may have heard a broadcast feature based on this book: if so, we urge them not to be put off reading the book. It is much better than the broadcast suggested, even if it is no *Doctor in the House* as the publishers optimistically suggest.

M. W. M.

Famous Criminal Cases (1). By Rupert Furneaux. London: Allan Wingate (Publishers), Ltd. 1954. x and 205 pp. (no index). (12s. 6d. net.)

This book adds little to what the ordinary reader of the newspapers already knows of recent sensational crimes. It deals with twelve cases, Christie, Miles Gifford, Craig and Bentley, Kathleen Davies, Mrs. Merrifield, George Roberts, Michael Davies, Alfred Whiteway, Iain Gordon, Ronald Chesney and the Bath race-horse switch; the case of Lord Montagu, Michael Pitt-Rivers and Peter Wildeblood is dealt with under the heading "An Unsavoury Case," and is used by the author mainly as a peg upon which to hang his views on so-called "unnatural" offences, combined with an historical summary of the attitude of society towards them from early times to the present day. But, although any reasonably regular reader of the newspapers could have, and probably has, read all these cases in as much detail as is here contained, it is highly improbable that he has taken the trouble to collect all the cuttings. Mr. Rupert Furneaux has supplied a handy little volume in which these cases may be read at one sitting and not in snippets from day to day. The author is not a lawyer and this is clearly not a book for lawyers; and the lawyer who picks it up will find himself asking many questions which are not answered. The reader is not always told, for example, the precise nature of the charges, or how the defence avoided this difficulty or that.

HENRY PALMER.

Books Received:

Seduction of the Innocent. By Fredric Wertham, M.D. London: Museum Press, Ltd. 1955. x and 397 pp. (no index). (21s. net.)

Murder in France. By Alister Kershaw. London: Constable & Co., Ltd. 1955. 188 pp. (no index). (15s. net.)

My Forty Years at the Yard. By Hugh Young, C.B.E. London: W. H. Allen & Co., Ltd. 1955. 252 pp. (no index). (16s. net.)

Six Ventures in Villainy. By Jack Smith-Hughes, Barrister-at-Law. London: Cassell & Co., Ltd. 1955. xi and 227 pp. (no index). (15s. net.)

The Blind Beak. By Ernest Dudley. London: Robert Hale, Ltd. 1954. 222 pp. (10s. 6d. net.)

Articles:

Cambridge Law Journal, April, 1955.
 Mens rea or absolute prohibition in statutory offence, p. 13.
 What is a crime? p. 16.
 Personnel of the criminal law in England and the United States, p. 80.

Journal of Criminal Law, Criminology, and Police Science, Vol. 45.
 Theories of criminality and problems of prediction, p. 412.
 An experiment in predicting delinquency, p. 432.
 Searching and disarming criminals, p. 481.

Journal of Forensic Medicine, Vol. 2, No. 1.
How trustworthy is a witness?, p. 14.
The use and abuse of cross-examination in relation to expert testimony, p. 21.

International Criminal Police Review, March, 1955.
A strange case of air traffic obstruction, p. 72.
A controversy over a forged document, p. 78.

Magistrate, Vol. 11.
Credibility, p. 30.
No case to answer, p. 35.

Justices' Clerk, March, 1955.
Justices of the Peace in New Zealand, p. 3.

Law Journal, Vol. 105.
" Special reasons " in road traffic prosecutions, p. 182.

Law Times, Vol. 219.
Magisterial topics, p. 167.

Justice of the Peace, Vol. 119.
Recession in juvenile crime, p. 160.
Damages and compensation in the juvenile court, p. 174.
The policeman as advocate, p. 195.
More public mischief, p. 196.
Statutory defence?, p. 215.

Police Review, Vol. 63.
French trials and tribulations, pp. 186, 206.
The wording of offences, p. 192.
Larceny—fraudulent conversion, p. 208.
Pride and prejudice—or some reflections on American police training methods, p. 224.

THE
CRIMINAL LAW
REVIEW

Editors
JOHN BURKE and PETER ALLSOP, M.A.
Barristers-at-Law

Editorial

Obstruction of the highway

A case of interest to all responsible for delivering oil or other liquids by pipe line laid across a busy street was heard by the Nottingham magistrates on April 4, 1955. An employee of Shell-Mex had to deliver oil into the cellar of certain premises and to do so laid a pipe about two inches in diameter across the pavement from the oil tanker to the man-hole of the cellar. He watched it for some time and then turned away to get a way-bill from his vehicle. While he was not looking a woman passer-by fell over the pipe. The employee was summoned for causing an obstruction, but the magistrates dismissed the case, holding that in the circumstances the pipe line was the only method by which the oil could be delivered. People delivering oil by this method, however, are under an obligation to protect the public from injury.

In an action for damages for nuisance the High Court recently had cause to consider the same problem as was raised in this case. In *Trevett* v. *Lee* [1955] 1 W.L.R. 113, they held that whether or not persons laying a pipe across the highway are obstructing the highway is to be judged by the reasonableness of their act both from their own point of view and from that of other members of the public.

Cruelty to children

The recently issued memorandum of the National Association of Probation Officers on cruelty and the neglect of children expresses the view that the present legal penalties are adequate, but that the alternatives to fining and imprisonment are not sufficiently invoked. The Association stresses the need for wider knowledge on the part of the court before passing sentence on conviction. It presses for extended use of the power to remand for inquiries and observation in order that full reports on the health, mentality and home conditions of the parents are made available. The unconstructive policy of committing neglectful mothers to prison is roundly condemned. The Association maintains that probation, with or without a condition of residence in a training home, is much more likely to produce a useful and lasting effect.

New prison for elderly prisoners

In July a special establishment for men prisoners aged sixty or more will be opened in a building adjacent to the open prison at Eastchurch, Isle of Sheppey, which will hold up to two hundred men. The prisoners will be drawn from local prisons, and governors will be instructed to exclude any individuals who are thought likely to prove troublesome, although since the new establishment will not be open in the same sense as the rest of the prison, it will not be necessary to exclude whole categories of prisoners. Within a secure perimeter provided by a twelve-foot wire fence the prisoners will have the opportunity to do outdoor work. Indoor work will also be provided in workshops in the building itself.

The elderly prisoners for whom this new prison is provided form the only considerable body of prisoners who are thought capable of being put into non-cellular accommodation and are not already in it.

New probation home

The Whitechapel Mission's new approved farm home for boys on probation at Great Horkesley Park, near Colchester, was opened by H.R.H. the Duke of Edinburgh on May 12. The home has grounds of twenty-five acres in which there are a kitchen garden, piggery and fowl run and in which a small herd of cattle is kept. Eventually it is proposed to accommodate thirty youths in the home.

Parliament

Prisons

Lord Pakenham, introducing a debate on prisons in the House of Lords, said that little was being done to reform prisoners. He spoke of the shortage of staff and suggested that in order to bring down the number of prisoners more use might be made of probation, of detention centres for juveniles, and some system of suspended sentence in dealing with sexual problems. Speaking of the work provided for prisoners Viscount Templewood referred to the French system; in five long-sentence prisons industrialists had installed machinery and the prisoners were paid a full wage for their work, while other prisoners were allowed to work in factories outside. Lord Mancroft, replying to the debate, spoke of the Government's plans for new prisons which are based on the decision to place in open conditions all prisoners who can safely and properly be trained there. He said that everything possible is being done to increase the recruiting of suitable prison officers; there are now 222 governors and assistant governors, compared with 130 in 1939. Although there has been a shortage of work in prisons, the position has now improved; prisons, however, cannot organise their labour force primarily on the basis of industrial efficiency; priority has to be given to custody, discipline and the carrying out of statutory rules (H.L. Debates, Vol. 192, cols. 741 *et seq.*; May 4, 1955).

Broadmoor patients

The responsibility for deciding when a Broadmoor patient is fit to be transferred or discharged rests on the Home Secretary. Major Lloyd-George, like his predecessors, considers that the expert staff of psychiatrists at Broadmoor, who have the patient under constant observation, are in a better position to advise him on the patient's mental state than an outside doctor (H.C. Debates, Vol. 540, col. 1046; April 28, 1955).

Heroin

After December 31, 1955, the manufacture and export of heroin will not be permitted except for small quantities for purely scientific purposes. The importation of this drug has been prohibited for a number of years as adequate supplies have been manufactured in this country, and this prohibition is to be maintained. It is understood that perfectly good substitutes for this drug are now available (H.L. Debates, Vol. 192, col. 595; April 27, 1955).

Additional Metropolitan magistrate

To relieve the congestion in certain of the Metropolitan magistrates' courts an additional court was opened at Clerkenwell on April 25. At the same time court boundaries were altered in favour of the courts that were most pressed (H.C. Debates, Vol. 539, col. *124*; April 7, 1955).

Tests for drunkenness

No motorists charged by the Metropolitan police with being under the influence of drink while in charge of a car last year requested a blood test. Research on the effects of alcohol upon driving performance is being carried out by the Medical Research Council and the Road Research Laboratory, and until this is complete the Home Office is unwilling to pass any judgment upon the value of blood tests (Vol. 540, col. 332; April 21, 1955).

Parliament was dissolved on May 6; the new Parliament will be summoned on June 7.

Safer driving

We have received from the Walsall police traffic department a booklet entitled "Towards Safer Driving." It sets out the main rules of good driving, point being given to each one by a graphic illustration, and should prove effective in reminding drivers of the conduct required to make the roads safer.

Homosexuality

Persons who propose to tender evidence to the committee set up to consider the problem of homosexuality (see [1954] Crim.L.R. 575) should submit their written evidence not later than the end of June. Such evidence should be addressed to the secretary of the committee at the Home Office, Whitehall, London, S.W.1.

Judicial appointment

Mr. Myer Alan Barry King-Hamilton, Q.C., has been appointed Recorder of the City of Hereford.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Review. They should be sent to the EDITOR, *Criminal Law Review*, 3 CHANCERY LANE, LONDON, W.C.2. *Every effort will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Evidence Obtained by Illegal Means

By GLANVILLE WILLIAMS, LL.D.

Quain Professor of Jurisprudence in the University of London

It is proposed to discuss two problems in the law of evidence that raise fundamental issues of penal policy. The first relates to induced confessions and discoveries made in consequence of them. The second relates to evidence obtained by illegal search, which was the subject of a recent pronouncement by the Privy Council in *Kuruma* [1955] Crim.L.R. 184. In both these situations the question posed is whether the law regards as admissible evidence that has been obtained by inadmissible means.

Induced Confessions

Although confessions as such are admissible in evidence, there is an exception at common law where the confession has been induced by a promise or threat held out by a person in authority (*e.g.* a constable or prosecutor). Such an induced confession cannot be given in evidence, unless indeed the inducement had no relation to the charge. For example, general words to the effect that it will be better for the accused if he confesses, or worse for him if he does not, will exclude the confession; but a promise to let the accused see his wife if he confesses will not have that effect (*Lloyd* (1834) 6 C. & P. 393). Even a promise of the last kind would, of course, be a highly improper method for a police constable to adopt to induce a confession.

Evidence of things found

Although a confession is inadmissible on the ground of inducement, evidence may be given that in consequence of what the accused said certain property was found (or other discovery made). The finding of the property, and the fact that the accused knew where it was, may of course be highly incriminating circumstances, sufficient to convict without giving the details of the confession in evidence. It was even held in one case that a constable could give evidence that the accused told him that he had thrown a lantern into a pond in Pocock's Fields, if the statement was confirmed by the finding of the lantern, even though the statement as a whole was inadmissible because improperly induced (*Gould* (1840) 9 C. & P. 364).

This ruling would not be remarkable if it were merely that evidence could be given of the finding of the lantern. What makes it worthy of study is that the finding of the lantern *lets in evidence that the accused admitted to knowing where the lantern was.* In other words, it renders admissible part of a confession which would otherwise be inadmissible.

What is the reason for so admitting part of the confession? To find this, we have to consider the reason why induced confessions are generally excluded, for the rule in *Gould* operates as an exception to this rule. Three possible reasons may be suggested for excluding induced confessions: that such a confession may be untrue; that it is excluded in order to discourage improper practices on the part of those in authority; and that it is excluded on grounds of fairness to the accused. None of these explanations completely fits the present law. The first, which appealed to Wigmore, the author of the leading American treatise on Evidence, has the merit of explaining why evidence can be given of the finding of property in consequence of the confession; this finding is a fact, and is not open to speculation as to its truth or falsity. On the other hand it might be argued that since the finding is a fact, it establishes the truth of the confession, which should then become admissible as a whole; yet according to the law the body of the confession remains inadmissible even though it is so strikingly confirmed. The second and third explanations, that the exclusion rule is a way of disciplining the police, or is based on fairness, are hardly consistent with the admission of property found in consequence of the confession. It is interesting to note that the United States Supreme Court, which adopts the philosophy that evidence improperly obtained must be excluded in order to compel the police to obey the law, excludes even evidence of the consequential finding of goods. This extreme rule may be justified by local conditions, for in America a serious problem is caused by malpractices on the part of the police. French courts, on the other hand, allow a confession to be given in evidence even if it is improperly induced; but if shown to be improperly induced the presiding judge will direct the jury to ignore it. It may be doubted whether a mere direction can efface the impression made on the mind of the jury by hearing the confession. In English practice, the jury is not allowed to be present while argument takes place on the admissibility of evidence.

Exception where the thing that comes to light is a document

A notable exception to the general rule in *Gould,* allowing evidence of things found, was made by the Court of Criminal

Appeal in *Barker* [1941] 2 K.B. 381 (C.C.A.). Inland Revenue officials investigating an alleged fraud read to the taxpayer an extract from Hansard to the effect that if he voluntarily disclosed the full extent of the fraud, the Board would not institute criminal proceedings, but would accept a pecuniary settlement. As a result of this assurance the taxpayer produced certain documents. The Board instituted a prosecution in which the documents were admitted in evidence against the taxpayer. The taxpayer was convicted, but on appeal his conviction was quashed on the ground that in the circumstances the documents were inadmissible. The court did not question the normal rule that discoveries made in consequence of an inadmissible confession were admissible, but held that it did not apply there, because the promise expressly related to the production of business books and records, so that the documents produced stood on the same footing as any oral or written confession.

It may be observed that this was a tax case, where it was easier to adopt a dispassionate attitude than in some vile murder or grave assault where there would be a social danger in allowing a criminal to escape for defect of evidence. Nevertheless this was not the reason given for the decision, and it evidently applies at common law to all crimes. Then what precisely are its limits? There were two features in the case: (1) the taxpayer himself produced the things, and did not merely tell the officer where they were to be found; and (2) the things produced were documents, not (for example) stolen goods. The first feature can hardly explain the decision, for it can make no difference in principle whether the accused delivers the thing or gives directions for finding it. Thus it seems that the decision is to be explained solely on the ground that the thing produced was a written document, which could be equated, in the eye of the law, to a written confession. Yet there is an obvious difference between a fraudulent written account and a confession of past fraudulent accounting. As a general matter, a confession made in consequence of an inducement is open to doubt because it may perhaps not be true. But when the taxpayer produces his fraudulent records which he compiled before the charge was made, there is no reason to suppose that he fabricated the records or would or could have done so for the purpose of being convicted. The records are obviously genuine, in the sense that they were actually kept in that way; they are as much a fact as the stolen property that is found in consequence of an inadmissible confession. It follows that the rule of law excluding these records is not based on the possibility of untruth. Nor, in the actual case, was it based on any improper conduct on the part of the Revenue in holding out the inducement. The practice of the Revenue was an established one, and was stated in Parliament; indeed the promise made to the taxpayer was made by reading him an extract from Hansard, in which the practice was set out. The Board of Inland Revenue may compromise claims by accepting penalties, and there was nothing improper in the original promise. The impropriety, if anything, was in prosecuting in breach of the promise. Thus the true reason why the evidence was excluded was the broad one of fairness to the accused. The prosecution must not put in documentary evidence if that would involve trickery towards or breach of faith with the accused person.

But if this is the philosophy of the case it marks a departure from the ruling in *Gould* that evidence may be given of discoveries made in consequence of a confession. It is just as much a breach of faith with an accused person to give evidence of the finding of stolen goods as to give evidence of fraudulent accounts, if in each case he has been promised immunity from prosecution if he confesses.

From this point of view it is interesting to compare the actual decisions in *Gould* and *Barker*. The law is supposed to be that where an inducement is improperly made by a person in authority, anything in the nature of a confession is inadmissible, but anything in the nature of a thing found is admissible. This rule is applied to cases where the prosecution wish to give in evidence (1) a statement by the accused that he threw a lantern into a pond (coupled with the actual finding of the lantern), and (2) account books found in consequence of the accused's statement. It seems extraordinary that the courts hold that the accused's statement in (1) is a thing found while the physical books in (2) are a confession.

From this review it will be seen that the basic position of English law in relation to the admissibility of evidence is not clearly or consistently worked out. Generally, the courts take the view that if a thing is clearly a fact, as opposed to a confession of a fact, it may be given in evidence, on the principle that anything that is relevant and true may be given in evidence. On this view, the law of evidence is not to be used as a way of preventing the police from acting improperly or illegally, or as a way of giving expression to notions of fairness between the State and the accused. Yet, as *Barker* shows, there is no telling when the notions of fairness may irrupt into the rule and bring about an exception; nor, when the exception is made, is it easy to assign its limits or to reconcile it logically with the rule.

It remains to be noted that the decision in *Barker* is no longer fully effective in the type of case that was there considered.

Parliament sometimes shows a regrettable readiness to brush aside the fundamental principles of the law at the behest of the executive, and it has done so with respect to induced confessions in tax matters. By an Act of 1942, now embodied in the Income Tax Act, 1952, s. 504, the tax authorities may tell a taxpayer that though no undertaking can be given whether they will accept a pecuniary settlement instead of taking criminal proceedings, it is the practice of the Commissioners to be influenced by the fact that a person has made a full confession of any fraud or default to which he has been a party and has given full facilities for investigation. If the taxpayer is induced by this statement to make a statement or produce documents, the statement or documents remain admissible in any proceedings that may subsequently be brought against him. In other words, even though the taxpayer has made a full disclosure, and the Commissioners know this and yet prosecute him by way of departure from their expressed general policy, the confession is evidence against him. It may be said that there is here no real trick, because the inducement expressly says that no undertaking can be given as to prosecution. However, it is obvious that the police would not be allowed to obtain a confession in an ordinary criminal case by saying " Although we can give no undertaking as to prosecution, it will be better for you to tell the truth." A court would be able to see that an inducement has been held out, notwithstanding the verbal reservation. What it comes to, therefore, is that the tax authorities are given the privilege by Parliament to extort confessions by trickery. Perhaps they do not exercise this privilege, but refrain from prosecution if a full disclosure is in fact made. The fact remains that under the Income Tax Act there is no longer any legal check upon their behaviour in this respect. The decision in *Barker* will continue to apply to tax prosecutions only where the tax authorities have substantially departed from the statutory caution, as where they have neglected to point out that no undertaking can be given as to prosecution. But there is no reason why the decision should not remain in full effect for ordinary crimes.

Illegal Search

According to the prevailing English view, the fact that evidence is obtained through a trespass or other illegal search or seizure does not exclude it from evidence. It seems, however, that the only reported decision of a strictly English court is that of a Divisional Court in *Jones* v. *Owen* (1870) 34 J.P. 759. There, the facts were that a constable illegally searched the defendant and found twenty-five young salmon in his pocket; it was held that the evidence was admissible on a charge of illegal fishing. Mellor J. said: "I think it would be a dangerous obstacle to the administration of justice if we were to hold, because evidence was obtained by illegal means, it could not be used against a party charged with an offence."

This decision was not cited before the Privy Council in *Kuruma* [1955] Crim.L.R. 184, but the same result was reached. The defendant had been convicted in East Africa of being in unlawful possession of ammunition, evidence having been given by police officers that they had searched him and found the ammunition on him. It was alleged for the defence that this search was unlawful. The Privy Council refused to allow an appeal against conviction, holding that even if the search was illegal, the evidence obtained by it did not become inadmissible. The judgment was delivered by Lord Goddard C.J., who laid it down that the test to be applied in considering whether evidence is admissible is whether it is relevant to matters in issue. If it is, it is admissible and the court is not concerned with how the evidence was obtained. However, the learned Chief Justice qualified this by saying: "No doubt in a criminal case the judge always has a discretion to disallow evidence if the strict rules of admissibility would operate unfairly against the accused. . . . If, for instance, some admission of some piece of evidence, *e.g.*, a document, had been obtained from a defendant by a trick, no doubt the judge might properly rule it out." It is not easy to see why evidence obtained by trickery should be ruled out, when evidence obtained by unlawful force is not; the latter would seem to be a more flagrant breach of the law than the former.

Lord Goddard went on to say: "It should be stated that the rule with regard to the admission of confessions, whether it be regarded as an exception to the general rule or not, is a rule of law which their Lordships are not qualifying in any degree whatsoever." This qualification is satisfactory as far as it goes, but one would have liked to know the reason for not applying the general rule of admissibility to the special case of induced confessions. There must be some reason why an induced confession is excluded, though relevant, while evidence obtained by an illegal search is admitted. Some consideration other than that of relevancy must create this distinction. It would have been more satisfactory if we had been told what the consideration is. In the absence of such an explanation, we do not know whether the law is fundamentally consistent with itself. For example, one possible reason for excluding induced confessions is that this is necessary in order to keep the police and prosecution to proper behaviour. But this reason would equally suggest the exclusion of evidence obtained by an illegal search.

American opinions

In America, the federal courts operate a rigid rule of exclusion of all evidence obtained by illegal searches and seizures (*Weeks* v. *U. S.* (1914) 232 U.S. 383), though the defendant is required to make his objection before trial. The federal lead has been followed in only 17 of the 48 states, most of which admit the evidence, and this deep division of judicial opinion is reflected in the opinions of writers.[1]

The arguments pro and con, as they have been stated in the American cases and literature, may be briefly summarised as follows. That in favour of admissibility starts from the premise that all facts logically relevant to the issue ought to be admissible unless there is some strong reason of policy to the contrary. Although it is important that the police should not, in enforcing the law, themselves break the law, any breach of law on their part can be redressed by an action for damages in tort or by a criminal prosecution, according to the nature of the illegality. To exclude the evidence would have the serious consequence that a dangerous criminal might be acquitted and so be left to prey on the community. Cardozo J. said: " A room is searched against the law, and the body of a murdered man is found. If the place of discovery may not be proved, the other circumstances may be insufficient to connect the defendant with the crime. The privacy of the home has been infringed, and the murderer goes free."

Continuing this argument, it is said that to exclude the evidence would be a clumsy weapon because it would penalise the public at large instead of the individual policeman who committed the illegality. Moreover it would directly benefit only the guilty person ; the innocent would take no profit from it, except in so far as it may have a general restraining influence on the police.

The argument for exclusion of the evidence starts from the paramount importance of securing fair and legal practices on the part of the police. Freedom from arbitrary interference on the part of the State and its agents is one of the ultimate values of Western democratic society. Totalitarianism is still too close a spectre to make it possible for us to tolerate the notion that the police are themselves above the law. " Uncontrolled search and seizure," declared Jackson J., "is one of the first and most effective weapons in the arsenal of every arbitrary government. Among deprivations of rights, none is so effective in cowing a population, crushing the spirit of the individual and putting terror in every heart. One need only briefly to have dwelt and worked among a people possessed of many admirable qualities but deprived of these rights to know that the human personality deteriorates and dignity and self-reliance disappear where homes, persons and possessions are subject at any hour to unheralded search and seizure by police" (*Brinegar* v. *U. S.* (1949) 338 U.S. at 180).

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[1] For a useful survey see Machen, *The Law of Search and Seizure* (Chapel Hill, 1950) 133 *et seq.* See also Livingston Hall and Sheldon Glueck, *Cases on Criminal Law and its Enforcement* (St. Paul, Minn. 1951) pp. 572 *et seq.*; and on the whole subject an admirable article by Professor Zelman Cowen in (1952) 5 Vanderbilt Law Review 523.

This side contends that it is mere theory to say that police illegality is adequately restrained by proceedings in the courts. Although illegal arrests, detentions and searchings are not uncommon, actions are rarely brought. The reason may be lack of resources, or fear of victimisation, or ignorance of the law, or a doubt whether the damages awarded will be worth the trouble and risk of suing, or fear of publicity. These considerations operate even where the complainant has been acquitted. Where, as the result of an illegal arrest or search, he has been convicted and punished for crime, he feels even less like a further recourse to law by proceeding against the police. Whatever the reason, the fear of being sued is not an effective deterrent to the police. It may be added that such deterrence as there is is lessened by the practice of paying out of police funds damages awarded against a policeman for the bona fide performance of his duty.

Still less can the possibility of a prosecution against the police be counted as an effective deterrent. For many illegal searches no prosecution can be brought, since they amount merely to a civil trespass. Even where a crime of assault or malicious damage is technically involved, an officer acting in good faith is unlikely to receive much more than a caution from the magistrates. It would be a hardship to inflict any substantial punishment on the officer, where what is in question is not the conduct of an individual but proper police practice generally. Although it may be desirable in the public interest that improper practices should receive public reprimand, the injured individual, who has already suffered from the law and its officers, can hardly be expected to put himself to the trouble and expense of prosecuting merely to obtain such a public declaration. In fact, it is almost unknown for the police to be prosecuted except by the police themselves, and such prosecutions are brought only for offences of dishonesty which are universally reprobated. Excess of zeal on the part of the police is dealt with, if at all, only through internal discipline.

The conclusion of this argument is that the theoretical remedies against the police are ineffective to restrain this form of illegality. On the other hand, an exclusionary rule of evidence is highly effective, because it deprives the past illegality of its fruit, and future illegality of its purpose. All the efforts of the police in building up their case come to nothing, and instead of obtaining a conviction they are quite inevitably exposed to public censure. There can be no doubt of the value of such a rule for the purpose for which it is intended; and it has its effect on the police force as a whole without penalising individual officers otherwise than by bringing their conduct to public notice.

Such a rule can also be supported on general legal principle. Freedom from illegal arrest and search is a precious constitutional right, which should receive effective and not merely theoretical protection from the law. It is an ancient maxim that no one should be permitted to profit from his own wrong, and no reason appears for exempting the State and its agents from the operation of this maxim. A judge, in trying a defendant for a breach of law, should not in so doing condone the flagrant illegality of the prosecutor's method of obtaining evidence. Finally, to condemn a defendant on evidence illegally obtained is a negation of those principles of restraint and fairness that traditionally underlie the administration of criminal law—principles that were applied in *Barker* (p. 341) to justify an exclusion of evidence.

It is wrong to reply to this argument by saying that the exclusionary rule benefits only the guilty, for by keeping the police in check it preserves the constitutional rights of all. And it is an overstatement to say that the result of the rule must be that dangerous criminals are acquitted, for this is so only in the unlikely event of the police continuing illegal practices that can bring them no advantage.

The Scottish rule

The Scottish courts recognise that there are two important interests that are liable to come into conflict—(*a*) the interest of the citizen to be protected from illegal invasions of his liberty by the authorities, and (*b*) the interest of the State to secure that evidence bearing upon the commission of crime, and necessary to enable justice to be done, shall not be withheld from courts of law on any merely formal or technical ground. Neither of these objects. said Lord Justice-General Cooper in *Lawrie* v. *Muir,* 1950 S.C.(J.) 19, can be insisted upon to the uttermost, and the position is that the judge has a discretion to admit or exclude the evidence. " Irregularities require to be excused, and infringements of the formalities of the law are not lightly to be condoned." One question to ask is whether the departure from the strict procedure has been adopted deliberately and by way of trick. Another is whether Parliament has prescribed a special procedure, departure from which is likely to be regarded as fatal.

The facts of *Lawrie* v. *Muir* were that the keeper of a dairy was convicted of using for the sale of her milk bottles belonging to other persons contrary to a statutory order. The evidence against her was that of two inspectors of a limited company formed for the purpose of restoring milk bottles to their rightful owners. The inspectors had no right to enter the defendant's premises, because she had not contracted with the Milk Marketing Board and it was only the board's contracts that gave the inspectors a right of entry. However, the defendant permitted the inspectors, on producing their warrants, to make a full inspection. It was held by a Full Bench of the High Court of Justiciary that the inspectors, though acting in good faith, had illegally entered the premises by misrepresentation, and that their evidence was inadmissible; the conviction was accordingly quashed. The reason why the court exercised its discretion to rule out the evidence was that the inspectors had only narrow powers, of which they ought to know the limits. The decision is all the more striking to an English lawyer because he would not regard the entry by the inspectors, being made with the defendant's consent, as wrongful. The misrepresentation as to the right to enter would not be regarded as vitiating the consent in English law. However, it is an intelligible view that the entry, though not tortious, was sufficiently wrongful to exclude the evidence that came to light as a result of it.

In a later case, *Fairley* v. *Fishmongers of London*, 1951 S.C.(J.) 14, the inspector's departure from the strict procedure was a very narrow one. He was authorised to search for evidence relating to the contravention of food regulations and of an order dealing with salmon, but not under the Salmon Fisheries (Scotland) Act, 1868, which was the Act under which the prosecution was taken. In the circumstances, the court allowed the evidence to be given.

In *Turnbull*, 1951 S.C.(J.) 96, a search was made upon the defendant's premises under warrant, but documents were taken which were not within the scope of the warrant. Lord Guthrie refused to admit the documents in evidence, because in the circumstances a contrary ruling would tend to nullify the protection afforded to a citizen by the requirement of a magistrates' warrant, and would offer a positive inducement to the authorities to proceed by irregular methods. Lord Guthrie pointed out that there were no circumstances of urgency at the time of the seizure; nor were the documents taken plainly incriminating on their face. In *Kuruma,* Lord Goddard referred to this ruling with apparent approval: but he did not explain why evidence obtained by trespass to property is more objectionable, or more unfair to the accused, than evidence obtained by an assault upon the person, which was the alleged fact in the case before him.

Perhaps the most important of these Scottish cases is *McGovern,* 1950 S.C.(J.) 33. Here the police illegally took scrapings from the finger-nails of a person who was at the police station under suspicion. Being without his consent this amounted to an assault. It was held that the evidence of the scrapings had be excluded. Lord Justice-General Cooper again laid down the principle upon which the Scottish courts act. "Irregularities of this kind always need to be 'excused' or condoned, if they can be excused or condoned, whether by the existence of urgency, the relative triviality of the irregularity, or other circumstances. This is not a case where I feel disposed to 'excuse' the conduct of the police." This important decision, which was directly in point on the facts of *Kuruma,* because it involved a trespass to the person, was not cited in the judgment in that case, and the judgment delivered by Lord Goddard is, with all respect, misleading on the Scottish doctrine.

As a compromise between the opposing considerations of policy the Scottish doctrine has, it is submitted, much to commend it. Some of the difficulty would also be avoided if the police were given more comprehensive powers of search in really serious crimes, such as murder.

Influence of Drink Offences in Road Traffic Law

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The purpose of this article is to review the present position with regard to the important statutory offences under section 15 (1) of the Road Traffic Act, 1930; to examine both the technical and substantive nature of the different charges which may be preferred; and to consider the effect of the many judicial decisions relating to the meaning, scope and significance of the relevant statutory provisions.

Section 15 (1) of the 1930 Act, provides: " Any person who when driving or attempting to drive, or when in charge of, a motor-vehicle on a road or other public place is under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle, shall be liable " on conviction to the penalties which then follow.[1]

Three separate and distinct offences are created by the above subsection, namely: —

1. *Driving* a motor-vehicle on a road or other public place while under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle;
2. *Attempting to drive* a motor-vehicle in those circumstances; and
3. *Being in charge* of a motor-vehicle in those circumstances.

Duplicity in relation to section 15 (1) offences

If more than one offence is charged in the alternative in the same information or count as, for instance, where a person is charged with " driving *or* attempting to drive," the information or count, and any conviction thereon, will be bad for duplicity. As Avory J. said in *R.* v. *Surrey Justices, ex p. Witherick* [1932] 1 K.B. 450 at p. 452[2]: " It is an elementary principle that an information must not charge offences in the alternative, since the defendant cannot then know with precision with what he is charged and of what he is convicted and may be prevented on a future occasion from pleading *autrefois convict*."

Where three offences were stated in the alternative in the Particulars of Offence of *one count* in an indictment and a driver was convicted at Assizes on that count, the Court of Criminal Appeal held in *R.* v. *Wilmot* (1933) 24 Cr.App.R. 63[3] that since the count was bad for duplicity the conviction had to be quashed.

As regards informations, it is now expressly provided by rule 14 (1) of the Magistrates' Courts Rules, 1952 (S.I. No. 2190), that the court " shall not proceed to the trial of an information that charges more than one offence." It is important to note, however, that rule 75 (3) enables a single *summons* to be issued in respect of several informations, and, therefore, two or three separate offences under section 15 (1) may be included in one summons, provided, of course, the subject-matter of each information is separately stated and refers to one offence only.

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[1] In view of the seriousness of the various offences, provision was made in the Road Traffic Bill lately before Parliament for the penalties to be substantially increased.

[2] Charges under section 12 (1) (careless driving) of the Road Traffic Act, 1930, were involved in this case.

[3] This case concerned charges under section 11 (1) (reckless or dangerous driving) of the Road Traffic Act, 1930.

In *Edwards* v. *Jones* [1947] K.B. 659 [4] the Divisional Court ruled that where more than one offence is contained in a single information, the magistrates ought to ask the prosecutor to elect the particular offence he intends to proceed with and all other offences charged in the information should then be struck out. If the prosecutor declines to elect, the information must be dismissed on the grounds that it is bad; no agreement by the defendant can put the matter right, and that any conviction thereon will be bad for duplicity. Failure to adopt this procedure in the above case resulted in the conviction being quashed on an appeal by way of case stated. Lord Goddard C.J. stressed (pp. 662, 664): " There is no ground for saying that if an information discloses two offences the magistrates can hear the two offences together and then say: ' We will convict on one.' . . . the defendant is never to be called upon to answer two charges at the same time unless there are two separate informations and he consents to their being heard together." [5]

A very important case in which the above principles relating to duplicity were unsuccessfully raised in regard to charges under section 15 (1) of the Road Traffic Act, 1930, was *Thomson* v. *Knights* [1947] K.B. 336. In this case, it was contended that the phrase " under the influence of drink or a drug " constituted one set of offences all caused by the influence of *drink* and a further set of different offences all caused by the influence of a *drug*. In other words, section 15 (1) contained six separate offences and not merely three, as set out above. The Divisional Court held, however, that a conviction for *being in charge* of a motor-vehicle whilst " under the influence of drink or a drug " was a conviction for *one* offence only, and not for two offences in the alternative, since the relevant words were merely adjectival. As Lord Goddard pointed out (at p. 338): " What Parliament intended to provide was that a man driving or attempting to drive, or being in charge of a motor-car in a self-induced state of incapacity, whether that incapacity was due to drink or drugs, the man commits an offence in each of those cases. In my opinion the conviction is not for an alternative offence nor can it be said to be in respect of two offences."

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[4] Charges under both sections 11 (1) and 12 (1) had been preferred in the same information in this case.

[5] On the desirability of obtaining the defendant's consent before separate charges are heard together, see also *R.* v. *Ashbourne JJ., ex parte Naden* (1950) 48 L.G.R. 268.

Meaning of " motor-vehicle " and the words " road or other public place "

" Motor-vehicles " are defined by section 1 of the Road Traffic Act, 1930, as " all mechanically propelled vehicles intended or adapted for use on roads." In *Floyd* v. *Bush* [1953] 1 W.L.R. 242 [6] a pedal cycle fitted with an auxiliary motor which was in efficient working order was held to be a " motor-vehicle " for the purposes of the Road Traffic Act, 1930. Where, however, certain vital running parts had been removed from an auto-pedal cycle so that the machine could only be used as a pedal cycle, it was decided in *Lawrence* v. *Howlett* [1952] 2 All E.R. 74 [7] that the vehicle was not at the material time a " motor " vehicle, even though some petrol was still in the tank. Because a motor-vehicle and a trailer are not a *single* entity, but two separate vehicles, the Divisional Court in *Rogerson* v. *Stephens* [1950] 2 All E.R. 144 [8] had to quash a conviction where the information referred to a " motor-car *and* trailer," the relevant statutory offence (see also section 15 (1), above) relating to a motor-vehicle only and not to a motor-vehicle and trailer. In such a case, of course, the words " and trailer " should have been struck out by the magistrates before they proceeded with the hearing.

By section 121 (1) of the Road Traffic Act, 1930, the expression " road " means " any highway and any other road to which the public has access, and includes bridges over which a road passes." Although the following five cases did not involve offences under section 15 (1), they are nevertheless relevant for interpretation purposes. In *Bryant* v. *Marx* (1932) 48 T.L.R. 624 it was held that " road " includes the footpath as well as the carriageway, and in *Harrison* v. *Hill*, 1932 S.C.(J.) 13 the High Court of Justiciary decided that a private occupation road which led to a farm was a " road " for the purposes of the Road Traffic Act, 1930, since the public had access to it. Similarly, in *Bugge* v. *Taylor* [1941] 1 K.B. 198 the private forecourt of a hotel was held to be a " road," because it was in fact used by the public in every direction and vehicles had passed over it on a number of occasions. Where, however, the forecourt of a shop and a piece of private ground, both unfenced and unpaved, adjoined a highway, it was held in *Thomas* v. *Dando* [1951] 2 K.B. 620 that the land was not a

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[6] This case involved offences under the Road Traffic Act, 1930, sections 4 (1) (driving a motor-vehicle without a licence), 28 (1) (taking a motor-vehicle without the owner's consent), and 35 (1) (using a motor-vehicle without third-party insurance).

[7] An offence under section 35 (1) was charged in this case.

[8] Another compulsory insurance case under section 35 (1).

"road," since it was only used by customers of the shop. In *O'Brien* v. *Trafalgar Insurance Co.* (1945) 61 T.L.R. 225, the Court of Appeal held that a road within the fenced grounds of a Royal Ordnance Factory was not a "road" for the purposes of the 1930 Act, because members of the public were not admitted without a special pass, and, similarly, in *Buchanan* v. *Motor Insurers' Bureau* [1955] Crim.L.R. 321, a road forming part of the premises of the Port of London Authority was held not to be a road within the meaning of section 121 (1).

Regarding the significance of the words "or other public place" in section 15 (1) of the Road Traffic Act, 1930, the Court of Criminal Appeal held in *R.* v. *Collinson* (1931) 23 Cr.App.R. 49 that a private field became a "public place" on the occasion of point-to-point races, since the public then had access to it. Similarly, where an enclosure at the rear of an inn was often used as a car park, it was decided in *Elkins* v. *Cartlidge* [1947] 1 All E.R. 829, that since the public in fact had access to it, the enclosure must be regarded as a "public place." After observing that the words "road" and "public place" are treated *ejusdem generis* in section 15 (1), Lord Goddard C.J. said (at p. 829): "Having regard to the definition of 'road,' 'public place' for the purposes of this section must be read as meaning a place to which the public have access, *i.e.*, have access in fact. In this case it is expressly found that cars have access to the enclosure."

Principles and Observations Common to all Offences under Section 15 (1)

Onus of Proof

In all charges under section 15 (1), the prosecution must not only prove the influence of drink or a drug, but also that the accused was thereby rendered incapable of "proper control" of the vehicle concerned. Where a jury found a person "guilty of being under the influence of drink," the Court of Criminal Appeal held in *R.* v. *Hawkes* (1931) 22 Cr.App.R. 172 that a conviction of driving while under the influence, etc., contrary to section 15 (1) of the Road Traffic Act, 1930, was bad, since the verdict was ambiguous and only showed that the jury were agreed that the appellant was under the influence of drink, not that the influence was such as to render him incapable of having proper control of the vehicle.

As Lord Goddard C.J. pointed out in *Thomson* v. *Knights* (above, at p. 338): "The offence is driving, or attempting to drive, or being in charge of a vehicle, when the man is incapable of having proper control of *the* [9] vehicle, and that incapacity is caused by drink or a drug." It may well be, however, that insufficient emphasis has been given to the essential of "proper control" in certain later cases, such as *Duck* v. *Peacock* [1949] 1 All E.R. 318; *Jowett-Shooter* v. *Franklin* [1949] 2 All E.R. 730; *Leach* v. *Evans* [1952] 2 All E.R. 264, and *Haines* v. *Roberts* [1953] 1 W.L.R. 309. Since these cases all concern the special offence of "being in charge," further consideration of the relevance and importance of "proper control" will be deferred until this particular offence is examined in detail.

Special Reasons

Although the onus of proof in all charges under section 15 (1) lies upon the prosecution, it must be emphasised that once a defendant has been convicted of an offence, section 15 (2) provides that he shall be disqualified for a period of twelve months from the date of the conviction for holding or obtaining a licence, unless the court for "special reasons" thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification. In this connection Lord Goddard C.J. observed in *Jones* v. *English* [1951] 2 All E.R. 853 at p. 854 that "the onus is on the *defendant* [10] to show special reasons why he should not be disqualified."

According to the leading case of *Whittall* v. *Kirby* [1947] K.B. 194, the facts alleged to constitute special reasons must be special to the *offence* itself and not merely to the *offender*. Thus, it was held in the above case that there were no special reasons where the defendant had no previous motoring conviction and the retention of a licence was essential for his livelihood. Similarly, the fact that the defendant stopped his car on feeling the effects of drink and went to sleep was not a special reason in *Duck* v. *Peacock* (above); nor was it such a reason for a person to be sitting at night in a stationary and unlighted vehicle which was incapable of being started because of low batteries (*Hopper* v. *Stansfield* (1946) 48 L.G.R. 641). In *Chapman* v. *O'Hagan* [1949] 2 All E.R. 690, however, there were special reasons where the defendant was rendered incapable as a result of the unknown aggravated effect of consuming drink after taking drugs for medicinal purposes; and entry of a car to sleep with no intention of driving was held to be a special reason in *Jowett-Shooter* v. *Franklin* (above). Similarly, in *Jones* v. *English* (above) special reasons were found where a driver was asleep in an unlighted broken-down lorry improperly parked in a side road.

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[9] Italics ours. For the significance of this word, see the paragraph on the "proper control" aspect of the offence of "being in charge," below.

[10] Italics ours.

Admissibility of Medical Evidence

As regards the evidence of a police doctor in section 15 (1) cases, the Court of Criminal Appeal has held in *R.* v. *Nowell* (1948) 32 Cr.App.R. 173 that his evidence is admissible even though reasonable persuasion was used to overcome the defendant's initial refusal to be examined. This was not a case where it was alleged that actual force had been used to enable the doctor to examine a person who was all the time protesting against the examination, and although the appellant had only consented to the police doctor examining him after being told that it might be to his (the appellant's) advantage, Humphreys J. observed (at p. 178) that "the mere fact that he (the police doctor) said at one time: 'It may be better for you,' or 'It may be to your advantage that I should examine you,' is nothing to the point when it is suggested that that was an improper inducement to do something, analogous to the kind of inducement which excludes confessions made as the result of persuasion, promises or threats."

The general position in regard to medical evidence in section 15 (1) cases was admirably summarised by Humphreys J. when he said (at p. 180): "The evidence of a doctor, whether he be a police surgeon or anyone else, should be accepted, unless the doctor himself shows that it ought not to be, as the evidence of a professional man giving independent expert evidence with the sole desire of assisting the court."

To conclude this account of matters common to all offences under section 15 (1), mention must be made of two rulings of the Court of Criminal Appeal in *R.* v. *Carr* (1934) 24 Cr.App.R. 199, namely that charges for such offences should not (1) contain the word "drunk," and (2) be tried on a charge of manslaughter, even if counsel for the defence consents to such a course being taken.

Technical and Substantive Nature of the Offences under Section 15 (1)

Although an offence of *driving*, or *attempting to drive*, a motor-vehicle when under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle is normally much more serious than *being in charge* of a motor-vehicle under such circumstances, little need here be said of the first two types of offence since the question of "driving" or "attempting to drive" is largely one of fact. Reference must be made, however, to four cases in which the meaning of the expression "driving" was relevant.[11] In *Wallace* v. *Major* [1946] K.B. 473 the Divisional Court held that a person who steers a broken-down vehicle which is being towed is not "driving" the vehicle. Where, however, a person pushed his van down an incline, got into the driving seat and steered the van for about a hundred yards, it was held in *Saycell* v. *Bool* [1948] 2 All E.R. 83 that he was "driving" a motor-vehicle, even though there was no petrol in the tank and the engine was not running. Similarly, in *Shimmell* v. *Fisher* [1951] 2 All E.R. 672 there was held to be "driving" where one person released the hand-brake of a stationary vehicle and steered it for a few yards whilst two others pushed from behind. Finally, in *Langman* v. *Valentine* [1952] 2 All E.R. 803, a supervisor and his learner-driver were both held to be "driving" the vehicle where the learner sat in the driver's seat and had her foot in position to use, and did use, the accelerator and the foot-brake, and the supervisor was in the front passenger's seat keeping one hand on the hand-brake and the other on the steering wheel.

Regarding the offence of *being in charge* of a motor-vehicle when under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle, it must first be emphasised that this particular offence is still a very serious one. For example, in *R.* v. *Rigby* [1954] Crim.L.R. 62, the Court of Criminal Appeal held that where a person was found senseless in a stationary car at the side of the road at night without a rear light, a sentence of three months' imprisonment was not wrong in principle.

A second point of considerable importance in connection with the above type of offence is the judicial interpretation of the words "in charge of." In *Haines* v. *Roberts* [1953] 1 W.L.R. 309 the Divisional Court has now ruled that where a person leaves a motor-vehicle on a road or in a public place he is "in charge of" that vehicle until he puts it into the charge of *somebody else*. Thus, in that case the defendant was found to be "in charge of" his motor-cycle which was five feet away from him in the rear yard of a public garage. Similarly, a person three yards from his properly parked van was held to be in charge of it in *Leach* v.

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[11] Section 121 (1) of the Road Traffic Act, 1930, provides that "Driver," where a separate person acts as steersman of a motor-vehicle, includes that person as well as any other person engaged in the driving of the vehicle, and the expression "drive" shall be construed accordingly. None of the four cases about to be referred to concerned offences under section 15 (1), but they are nevertheless important for interpretation purposes.

Evans (above); a driver who deliberately stopped his car and fell asleep was convicted of "being in charge" in *Duck* v. *Peacock* (above); and a person who was resting in the passenger's seat of his car with the ignition key in his pocket was convicted for the same offence in *Jowett-Shooter* v. *Franklin* (above), even though he had no intention of driving and was merely awaiting the arrival of one of his employees to drive him home.

For comparative purposes the following four Scottish cases should be noted. In *Clark* v. *Clark*, 1950 S.L.T.(Sh.Ct.) 68, the supervisor of a learner-driver was held to be "in charge of" a vehicle, but where a motor mechanic was engaged to repair a motor-vehicle by the roadside, it was held in *Adair* v. *M'Kenna*, 1951 S.L.T. (Sh.Ct.) 40, that he was not "in charge" since he had no authority to drive the vehicle. In *Crichton* v. *Burrell*, 1951 S.L.T. 365, the High Court of Justiciary decided that a person was not "in charge of" his vehicle when he was merely waiting beside it with a friend and an employee had been sent for to drive the defendant home. Finally, where friends had put the defendant into the back of his car in a car park and immobilised the vehicle by removing the rota arm of the distributor, it was held in *Dean* v. *Wishart*, 1952 S.L.T. 86, that the defendant was not "in charge."

These last two decisions cannot be reconciled with the *Haines* v. *Roberts* principle that a person who takes a vehicle on to the road remains in charge of it unless and until he puts it into the charge of somebody else. No doubt the decisions turn on the rather ambiguous nature of the phrase "in charge of" which may either be somewhat narrowly construed, as in *Haines* v. *Roberts*, or more liberally interpreted, as in the Scottish cases, to allow for the relinquishment of charge or control in circumstances where the vehicle is not actually put into the charge or control of another. According to the English authorities, it would seem that there must always be somebody in charge of every vehicle on the roads or in a public place at any particular time, whereas the Scottish cases appear to recognise the possibility that in certain circumstances a vehicle might not be in the actual charge of anyone.

Where a person deliberately refrains from exercising any kind of control over a vehicle and merely uses it for the purpose of going to sleep in after having voluntarily relinquished any charge or control he previously had, it certainly seems strange that he can still be legally regarded as "in charge of" the vehicle. This is almost tantamount to saying that a person who is not in fact in charge must nevertheless be deemed to be "in charge" for section 15 (1) purposes, unless he has succeeded in putting the vehicle into the charge of someone else.

Even if the Divisional Court is right in its important recent ruling in *Haines* v. *Roberts*, it is submitted with great respect that there would appear to be a far more fundamental objection to the convictions in that and other cases such as *Duck* v. *Peacock*, *Jowett-Shooter* v. *Franklin* and *Leach* v. *Evans*, above. As previously mentioned, in all these cases insufficient consideration seems to have been given to the essential requirement that the prosecution must not only establish that the defendant was " in charge of " a vehicle when under the influence of drink or a drug, but also that he was thereby rendered incapable of having " proper control " of *the* vehicle. The measure of " proper " control must surely depend upon the amount of control which a situation demands, and this in turn would seem to be governed by the relevant circumstances of each particular case. Obviously a person driving at sixty miles an hour on a busy road requires far more " control " over the vehicle than a person who is merely sleeping in the passenger's seat of his car in a deserted parking place. In the latter type of case, however, there would appear to be no control whatsoever required of the vehicle at the material time, and it is accordingly submitted that a person cannot be incapable of having " proper control " if no control is demanded. Similarly, where a vehicle was properly and safely parked on a road as in *Duck* v. *Peacock* and *Leach* v. *Evans*, or in a public place as in *Jowett-Shooter* v. *Franklin* and *Haines* v. *Roberts*, it is indeed remarkable that the question of what degree of control was needed over each particular vehicle at the relevant time seems neither to have been argued nor considered, in spite of the fact that in *Leach* v. *Evans* and *Haines* v. *Roberts* neither vehicle was actually being used, and that in the other two cases there was apparently no need for any kind of control of the vehicles in the circumstances in which, and the purposes for which, they were being used.

In view of the seriousness of the consequences of convictions for offences under section 15 (1) of the Road Traffic Act, 1930, it is somewhat surprising that appropriate emphasis does not appear to have been given to what may yet prove to be one of the most important aspects of all prosecutions and appeals in influence of drink cases.

The Montesi Case

By Giulio Battaglini

Professor of Criminal Law and Procedure in the University of Bari

The preliminary proceedings

The first inquiries

At about 7 a.m. on April 11, 1953, the body of a drowned woman was found on the deserted beach of Tor Vaianica, about twenty-five miles from Rome and ten from the seashore of Ostia, by a labourer on his way to work. Owing to the apparently fresh condition of her body and the state of preservation of the clothes which she still wore, those who first saw the girl thought she had been only a short time in the sea. She wore a loose jacket, attached at the collar by one button and free at the sleeves; she had no skirt, stockings or shoes; later it was discovered that her suspender-belt was also missing.

Two days later the victim was identified as Wilma Montesi, twenty-one years old, the daughter of an artisan living in Rome. She had last been seen at about 5.15 p.m. on the afternoon of April 9 by the porter of the house where she lived with her family. Since then nothing had been heard of her.

The reasons for the girl's disappearance and the cause of her death appeared to be obscure from the beginning; but the investigations of the police charged with collecting the evidence concerning the tragedy were concluded in a few days.

Wilma's friends first hinted at the possibility of suicide, since the girl had left her home without her jewellery and without her identity papers. They maintained immediately afterwards that she must have gone to Ostia to bathe her feet in the sea, to relieve an irritation of the skin on one of her heels.

This supposition was confirmed by the mobile squad of the police headquarters at Rome (which was then directed by the superintendent Saverio Polito), which concluded the inquiry, stating that the girl's drowning was caused by a sudden sickness, due to her post-menstrual condition and that owing to the sea currents and the strength of the waves, the body had been carried in about thirty-six hours to the distant beach of Tor Vaianica.

This hypothesis was sceptically received both by the press and by public opinion. It appeared unlikely that Wilma, who was described as a timid young woman and most obedient to her parents' wishes, should go secretly to Ostia, where she had never been alone, at a strange time and without any urgent necessity, to face a stormy sea. The press insisted that a crime might have been committed, due possibly to love affairs and to a sudden illness which afflicted Wilma while she was with an acquaintance of hers. It was said that she had been noticed one night in the previous March, on the beach of Ostia, in a car which had sunk in the sand. A young musician, Gian Piero Piccioni, the son of Attilio Piccioni, vice-president of the Council of Ministers, was with her.

The accusations of the press were not followed by any inquiries on the part of the police. The Office of the Procurator, charged with the investigation, interviewed Wilma's friends (who repeated their version of the facts), and arranged a medical examination, which established that the girl was a virgin. As they could find no evidence of a crime in her disappearance and her death, the officials asked the examining magistrate to have the relevant documents put on the file.

The article by the journalist Muto

As these inquiries were about to be concluded by the Procurator's Office, the journalist Silvano Muto published in October, 1953, an article entitled "The Truth about Wilma Montesi's Death." Muto, after referring to the rumours current in journalist circles about Piccioni, who was said to be implicated in the tragedy from the first, connected Montesi's death with an alleged drug traffic on the coast of Tor Vaianica. Montesi, according to Muto, used to frequent this dubious scene. In the course of a party in the Capocotta area, possibly owing to the effects of drugs to which she was not accustomed, she had become sick. Those present had got rid of her body as they were convinced that the girl was dead, to avoid a scandal.

The journalist was subjected to penal proceedings for this article and accused of publishing false and tendentious information. But after he had named Anna Maria Moneta Caglio as one of the persons from whom he had received his information the charge against him was suspended and the judicial authorities resumed their inquiries.

Caglio then revealed that she had for many months been the mistress of the so-called Marchese Ugo Montagna, a close friend of Piccioni and well acquainted with State business and political circles. According to Caglio, Piccioni and Montagna were involved in Montesi's death; she had deduced this from a chain of circumstances which had attracted her attention, and from her suspicions of Montagna, who she thought was implicated in drug traffic and other mysterious activities. An important fact which tended to confirm her suspicions was that on the evening of April 29, 1953, shortly after Montesi's death, Montagna and Piccioni had unexpectedly visited the Chief of Police, Dr. Pavone, to seek his intervention, as they thought that Piccioni might be incriminated in Montesi's death.

This second stage of the inquiry also did not contribute greatly to the discovery of the true facts. Caglio's accusations were not believed and the investigations of the judicial authorities were concluded by a further entry in the records. However, when the proceedings against Muto were continued, Caglio persisted with her accusations, to which she added further particulars; this led to a further suspension of proceedings and the documents relative thereto were sent for by the Procurator-General of the Court of Appeal in Rome.

The Inquiry of the Investigating Division

The Procurator-General of the Court of Appeal, Dr. Leonardo Giocoli, charged the Investigating Division of the Court of Appeal of Rome with the inquiry. This Division has tasks and functions similar to those of the investigating judge who sits at every tribunal, as regards the collection of evidence; it has an office at every Court of Appeal and is entrusted by the Procurator-General with the most delicate and complicated inquiries. The inquiry is delegated to one of its members and the decision to quash the proceedings or to commit the accused for trial is pronounced upon a requisition in writing of the Procurator-General.

The inquiries of the Investigating Division were mainly directed towards obtaining information about Montesi's stay at Ostia, the time and cause of death, and the habits of life and morals of the young woman; whether the accusations of the press and Caglio against Piccioni and Montagna had any substance; whether or not the investigation had been misled by the undue interference of people attempting to favour Piccioni and by the complacency of Saverio Polito, who had been in charge of the police.

The investigation continued for about nine months, owing to the complexity of the inquiries which were frequently hindered by declarations made by witnesses to the press, in which Montesi appeared either as involved in the drug traffic, or as connected with mysterious individuals and high personalities who were said to be implicated in the affair.

Several hundred witnesses were interrogated; about twenty examinations were completed, including new medical inquiries, which followed the exhumation of the body, oceanographical and other types of technical inquiries.

The evidence centred on Gian Piero Piccioni, who was said to be the man with whom the girl had a sentimental relationship and in whose company she was said to be at the time she fell sick and was abandoned on the shore of Tor Vaianica. The inquiries concerning the alleged drug traffic connected with the woman's tragic end proved to be abortive.

Piccioni was accused of manslaughter by negligence; the ex-superintendent Polito and Montagna were accused of having helped Piccioni to evade police investigations.

Piccioni and Montagna were arrested and later released on bail.

At the close of the inquiry the assistant Procurator-General, Dr. Marcello Scardio, presented his written requisition, which was approved and signed by the Procurator-General, Dr. Leonardo Giocoli.

In this requisition, the committal for trial of Piccioni, Polito and Montagna was demanded and the position of the numerous witnesses who had been involved in the case was examined.

The Requisition of the Procurator-General

The requisition, a document of about 300 pages, sets in proper perspective the heads of accusation in respect of the death of Wilma Montesi against Piccioni and the men accused with him, Polito and Montagna.

The main arguments, on which the long and detailed document is based, can be summarised as follows:

(a) The thesis that Montesi went to Ostia on the afternoon of April 9 to bathe her sore feet was inconsistent with the facts because the girl did not suffer from any skin irritation. This story was a fiction of the victim's friends and was welcomed by the police in order to reach rapid conclusions about the inquiry, without further investigations of the cause of death. On the contrary, Montesi died on the night of April 10–11 at Tor Vaianica, very near the place where her body was found. She was in fact seen with a young man, who must be identified as Piccioni shortly before her death.

(b) There was no evidence to suggest that Montesi led a double life and was implicated in dubious transactions. All the circumstances led to the supposition that the girl had some relations with the person with whom she went away on the afternoon of April 9, who must be identified as Piccioni, with whom Montesi had been seen previously. The two of them had in fact been observed together a month before by the mechanic Piccinini in a car which had sunk in the sand on the coast of Ostia.

(c) Cogent evidence against the accused was furnished by the conversation which Piccioni and Montagna had on the evening of April 29, 1953, with the Chief of Police, even before the press openly accused Piccioni of complicity in the Montesi affair. This matter, which threw suspicion on the time of the meeting and the denial of the accused men, was first revealed by Caglio and later confirmed by the declaration of the Jesuit father Dall' Olio and an official of the office of the Minister Attilio Piccioni.

(d) In order to mislead the police inquiries, an attempt was made to implicate Prince Maurizio d'Assia in the affair; the latter was indicated as the man who on April 10 drove over the landholding of Capocotta in a car with a dark-haired girl, who might be identified as Montesi.

(e) Piccioni's alibi was a fiction. The accused maintained that from the evening of April 9 to April 13 he was sick in bed suffering from a tonsillary abscess; he called in evidence numerous doctors and exhibited various prescriptions which had been made out for him. In the submission of the public prosecutor the witnesses had made conflicting declarations and the date of one of the prescriptions had been altered.

(f) The responsibility of the ex-superintendent Polito, who on several occasions vouched for the accidental death of Montesi as due to a "medicated foot-bath," arose, according to the requisition, from a long and precise succession of circumstances, from which it was proved that Polito contributed in setting the inquiries on a false track and refraining from any investigation of Piccioni.

Montagna was said to have helped Piccioni to elude the investigations of the police, in agreement with Polito, with whom he maintained contact even during the course of the inquiry of the Investigating Division.

(g) It was established that Montesi died owing to a criminal act. It must be assumed, on the basis of the evidence, that she was abandoned in a state of unconsciousness; the use of toxic substances could not be excluded from the medical examinations; she was already thought to be dead, and abandoned on the extreme border of the seashore, where she died by drowning.

It is now the duty of the Investigating Division to examine the arguments of the Procurator-General and the defence of the accused.

The Investigating Division may quash the proceedings or commit the accused for trial; in the latter event, owing to the alleged crimes, the trial must take place before the Tribunal of Rome or in another court designated by the Court of Cassation; in the course of the proceedings all the questions which this strange affair has raised and still raises will again be examined.

Advocacy at Petty Sessions

By B. FRASER HARRISON, *Solicitor*

(*Continued from p.* 302)

Procedure at a Summary Trial

Opening

A summary trial of an accused commences with the clerk's reading out to him the charges upon which he is brought before the court, informing him of any right of election he may have, and of the provisions of section 29 of the Magistrates' Courts Act, 1952, if appropriate.

The accused is then asked to plead to the charges.

If any exception is to be taken to one of the magistrates trying the accused, now is the moment to take it, and also to claim that the court has no jurisdiction to try the charge. If this is left until later, it could be argued that the accused has waived any objection to lack of jurisdiction. The other matter that ought to be raised at this stage in appropriate cases is that two or more accused, who have been charged together, should be tried separately.

The accused then pleads to the charge.

The Plea

The advantages of and procedure following a plea of guilty have already been discussed on p. 154.

Rule 17 of the Magistrates' Courts Rules, 1952, sets out the order of speeches in a summary trial of an information.

Before he calls his witnesses the prosecutor may address the court, telling it what he intends to prove and the law upon which the charge is based.

At the close of the prosecutor's case and before the accused or his witnesses, if any, give evidence, the accused's advocate may also address the court, but if he does so he may not address the court again at the close of *all* the evidence unless the accused and at least one other witness have been called on the part of the accused and the court gives him permission. Moreover, if the accused or his advocate is allowed to have two speeches the prosecutor is also entitled to have a second, which will be the final address. Normally the accused's advocate relinquishes his right to speak at the close of the prosecutor's evidence, so that he may speak, as of right, at the end of all the evidence, in which case the prosecutor is not entitled to a second speech.

To have the final address means a great deal. The evidence is reviewed and spoken of in the most favourable light for the accused; the last word that the magistrates hear is from the accused's advocate. When the prosecutor has the final speech it enables him to criticise the accused's story and to emphasise its defects, and only for a very good reason should he be given such an opportunity.

If the defence is complicated, and the magistrates may be unable to grasp the reason for the inclusion of a particular witness it is sometimes necessary to outline the defence at the outset. The times when it is necessary to do so are so few that an inexperienced man could well forget that he has the right to speak at this juncture.

Apart from running the risk of not being permitted a second speech or of allowing the prosecutor the final word, an advocate who makes an address before calling his witnesses ties down the defence. The magistrates are told a story by the advocate and take one of two equally unfortunate views if the witnesses depart from it; either they suspect the advocate of misleading them or they think the witnesses are lying.

An inexperienced advocate may be irritated by this repeated advice to remain silent, but the best advocates are the least verbose.

Rule 17 permits the prosecutor to call evidence to rebut the evidence called by the defence.

No case to answer

Although not mentioned in rule 17 of the Magistrates' Courts Rules, 1952, both the accused's advocate and the prosecutor may have a further speech each.

Unless an Act or regulation makes a specific exception, it is for the prosecutor to prove the accused's guilt, and if he has not done so by the time he has called all his witnesses the magistrates should not permit the trial to continue.

There is no question at this stage of the proceeding of giving the accused the benefit of any doubt. The magistrates should ask themselves, " If no more evidence is called, can we convict? " and if the answer is " No " they should announce that there is no case for the accused to answer.

When an accused's advocate thinks that the prosecutor has failed to prove the accused's guilt he may submit this to the court; he may criticise the evidence called by the prosecutor and use legal argument, maintaining that in fact, in law, or in both, the prosecutor has failed to prove what he set out to prove.

To this submission the prosecutor has the right to reply, but he may only reply to the legal, not the factual, arguments on behalf of the accused. Thus, he may answer the argument that a particular section of an Act does not apply, but not when the accused's advocate avers that he has failed to prove, *e.g.*, that the witnesses identified the accused as the driver of the car.

Should the magistrates agree with the submission on behalf of the accused the case is dismissed, but if they think the prosecutor has proved sufficient for them to convict if the trial then stopped the accused's advocate has to decide what next to do.

If he is satisfied that the magistrates are wrong he ought not to call any evidence, and then, when the magistrates convict, as inevitably they will, rely upon an appeal by way of case stated to quash the conviction. In this event the accused's story will never be heard, and if the appeal is unsuccessful the accused may complain that he has not had his say. On the other hand, the accused, if he goes into the witness box, may give answers that supply the additional proof which the prosecutor lacked. This decision the advocate has to make for himself. There is no general advice to guide him; each case is different, and the decision should be made boldly.

The right to remain silent

When it is his turn to give evidence an accused may do one of three things: he may give evidence on oath, in which case he may be cross-examined; he may remain silent; or he may make a statement not on oath. In neither of the two latter events may he be asked questions. Sometimes it is to his benefit to remain silent, but a statement not on oath has no value; indeed, it gives the impression that the accused is telling lies and has too much conscience to do so on oath.

If a witness in addition to the accused is being called, the accused gives his evidence first.

Examination of a witness

Whichever side calls a witness conducts an examination in chief. Leading questions must not be asked; these are questions framed so as to make the required answer obvious. The other side then cross-examines the witness and finally the original advocate re-examines. During the re-examination the advocate must confine himself to matters raised in cross-examination of the witness.

Advocacy

Reading

A would-be advocate should make an exhaustive study of the rules of evidence, for without a knowledge of these he will flounder helplessly. He must also read one of the more authoritative books on the subject of advocacy and, more important than reading any book, watch other advocates on their feet in court. He will soon learn how not to be an advocate and may, in time, benefit from listening to some of those who are masters of the art. While he is following this advice, the would-be advocate may find the following comments useful.

Personality and behaviour

First impressions on a court are important. A dark suit and tie and clean linen add to an advocate's dignity. Bearing, mode of address, and general conduct are equally vital. A bench begins to like or dislike an advocate as soon as he enters its court and has often made up its mind long before his case has been called on. It is important to remember this, because many an advocate has already lost the court's sympathy by whispering and joking before he commences to plead for his client.

If an advocate is unknown to a court it saves embarrassment if he writes his name, firm and address on a piece of paper to hand to the clerk when the latter asks for his name.

It is not advisable for the stranger to ask for his case to be taken out of turn; it is a privilege reserved for habitués.

Quarrels and wordy disturbances, whether with an opponent or the court, are undignified and usually unnecessary. It is sufficient to say what has to be said and then remain silent. A magistrate is more sympathetic to a reasoned argument than to an irritable diatribe and nothing is more damaging than a reputation for being querulous.

It is the same when dealing with a witness. Although a quiet cross-examination may not give the impression of being dangerous, for that very reason it is. A quarrel between a witness and an advocate is almost always the fault of the advocate who has probably been overbearing and wrong in his approach.

If a man is courteous he is usually well liked, and if an advocate is popular with court officials he will find that many paths are smoothed for him: clerks will agree to take his cases out of turn and guide him away from mistakes, and in a moment of crisis a police officer prepared to make a telephone call can find a missing witness. The life of a man who is liked is immeasurably easier than that of someone for whom no one cares.

Witnesses out of court

At the request of one of the advocates in a case the magistrates will usually order all the witnesses to leave the court if they have not already been ordered to leave the court as a matter of course.

The time when the accused's advocate should make the request is before the prosecutor starts his opening speech, so that the witnesses he is calling do not hear it.

If the majority of the prosecutor's witnesses are police officers they are asked to be out of court only if there is a particular reason. Most officers are trained to give evidence and are witnesses so frequently that they are used to the rôle: they will have discussed the case together if they have not written up their notebooks at the same time and will not be disconcerted by not hearing one another give evidence.[1] Furthermore, it is not unknown for information to be passed to those waiting outside, particularly if an adjournment breaks into the case.

The prosecutor's case is certainly weakened if the testimony of two of his witnesses does not agree, but it is strengthened to an even greater degree if they both agree despite the absence of the second witness while the first was being examined.

An order to the witnesses to leave court applies equally to those of the accused. They are not used to appearing in court and will be more confused if they are not allowed to hear the case progress. Unlike the prosecutor's case a defence has to be ready to improvise and cope with the unexpected. When an untrained witness anticipates testifying about one matter he can seldom be relied upon to answer sensibly questions about something else even if he has heard the prosecution and ought to be able to appreciate the reason for the altered tactics; if he has been sitting outside and is ignorant of what has happened in the court he will be " all at sea " when he is questioned about a topic he has not previously discussed.

There are two occasions, and two only, when the accused's advocate asks for the witnesses to leave the court; when there is a very good reason for so doing and, secondly, when the majority of the prosecutor's witnesses are unofficial persons and the accused, who must remain in court throughout the trial, is calling no other witness than himself.

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[1] See " A Police Officer's Notes " [1954] Crim.L.R. 833.

Putting the question

It is a general rule of law that if an advocate does not cross-examine a witness he is presumed to accept the evidence of that witness. Should the defence intend to contradict the whole or any part of a witness's testimony the witness must be told of this by questioning him on the disputed parts of his testimony so that he has an opportunity to explain.

This cross-examination should not consist of a constantly repeated, " I put it to you that . . ." or, " Are you asking the court to believe . . .", which merely indicates to the witness those matters upon which he ought to be emphatic. So long as it is made clear to the witness and the court which parts of his testimony are not accepted the more skilful and guileful the examination the more likely it is to elicit the truth.

If a series of witnesses all give the same evidence there is no need to carry out a lengthy examination of each, but it must be made clear at an early stage that the evidence of all will later be contradicted.

The end of the case

An advocate should be able to accept the magistrates' final decision with courtesy and equanimity even if he believes it to be wrong. Nothing is more pathetic than an advocate who mutters and threatens an appeal. Everyone knows that the accused may appeal if he wants to and an advocate only looks foolish if, after his display of indignation, the accused does not wish, or cannot afford, to do so.

Finally, when all is over, the least an advocate can do is to see the accused and the relatives or friends and explain the verdict.

If an accused has been sent to prison and has not brought a friend to court who can tell the unfortunate wife of what has happened it would be cruel to do other than send a message to her, first having obtained the client's permission to do so.

Drunkenness as a Defence

By J. F. Garner, LL.M.,
Clerk of the Peace, Borough of Andover

Drunkenness, fortunately, does not figure so largely in our criminal courts as it used to some decades ago, and when it does it normally forms the gravamen of a charge under section 15 of the Road Traffic Act, 1930. However, as Professor Glanville Williams says in his *Criminal Law—The General Part,* § 111, " if the crime requires intention, drunkenness may help to show that there was no desire of the consequence." Drunk or sober, a man is presumed to intend—for the purposes of *mens rea*—the reasonable and probable consequences of his acts; but this does not mean that drunkenness is not a defence where intent is one of the constituent elements of the crime. Professor Williams instances drunkenness as being used to establish the absence of an intent to kill, to commit suicide, to do grievous bodily harm, or to attempt a crime, and at the writer's quarter sessions drunkenness was recently pleaded as a defence in a charge of shopbreaking with intent to commit a felony—namely, to steal—contrary to section 27 (2) of the Larceny Act, 1916.

In this case two young soldiers were charged with having broken and entered the local store of Messrs. Woolworth's, but it was not suggested that they had stolen anything. To enter the premises they had had to climb over a number of walls, along a flat roof and through a skylight, and when stopped by a police officer shortly after the incident they were unable to give a satisfactory account of their movements that night. Later they admitted the breaking and entering, but gave an account of an extremely long list of public-houses which they had patronised earlier that evening, and claimed that their recollections were extremely hazy, and said they remembered entering the store but could not explain why they went there or what they did there.

The learned recorder directed the jury in the usual manner as to the need for the prosecution to establish their case beyond all reasonable doubt, pointing out that the only issue in the case was the intention of the defendants at the time of the breaking and entering—an issue which had to be established by the prosecution if the jury were to convict the accused. If the accused were so drunk that they were incapable of forming an intent to steal, then they were entitled to an acquittal. Naturally, the facts have been stated somewhat baldly in the above account, and there were a few other minor points which, no doubt, the jury felt tended to the advantage of the accused, for, after retirement, they found both accused "not guilty."

With respect, it is submitted that the learned recorder was clearly right in advising the jury of the effect of drunkenness in this case; to quote Professor Williams again, "where drunkenness goes to negative *mens rea,* and it is disputed whether the defendant was drunk or not, he is entitled to the benefit of any reasonable doubt. But the onus is on him to introduce some evidence (although it be slight, or doubtfully relevant) to go before the jury."

The other interesting point about this case is that the two accused could not, in the circumstances, have been convicted of any offence. Breaking and entering premises, if there is no malicious damage (there was none in this case), is no offence if there is also no felonious intent. Though drunk when inside the store, and so drunk that they could not form a felonious intent, the accused could not have been convicted summarily of being found drunk in a public place, or of being guilty while drunk of riotous or disorderly behaviour in a public place (Licensing Act, 1872, s. 12), as *ex hypothesi* they were not in a public place—when accosted by the police officer the two accused had "sobered up" considerably. Presumably, it is possible for a man to be so drunk as to enable him to plead his insobriety as a defence on this sort of charge, and yet not be so drunk as to be guilty of an offence under the Licensing Acts—"drunk and disorderly," etc.

Practice and Procedure

Quarter Sessions

Quashing an indictment

The quashing of an indictment at quarter sessions is a rare event, but the circumstances in which one was recently quashed were most exceptional and, indeed, quite Gilbertian. After a plea of "Not Guilty" had been taken on an indictment charging simple larceny, counsel for the prosecution moved to quash the indictment on the ground that it was bad because there had been no proper committal. Evidence was called to prove that on his first appearance before the magistrates, the prisoner, who was not then represented, had elected summary trial after proper warning of the circumstances in which he might be sent to quarter sessions for sentence. Thereupon the charge of larceny was put to him and he pleaded " Not Guilty." The trial was then adjourned. At the adjourned hearing the bench was differently constituted and there was a different clerk. Counsel, who now appeared for the defence, stated that his client elected to go for trial. Depositions were taken and in due course the prisoner was committed.

At quarter sessions counsel for the defence strongly resisted the motion to quash the indictment, advancing a number of arguments and citing cases which did not affect the point on which the court rested its decision. This was that section 24 of the Magistrates' Courts Act, 1952, was conclusive. That section provides that a magistrates' court " having begun to try an information for any indictable offence summarily, shall not thereafter proceed to inquire into the information as examining justices." The court held that taking a plea after election for summary trial is a step in that trial and that that determined the matter. The purported committal was therefore bad and accordingly the indictment must be quashed. Presumably the accused should be brought again before the magistrates' court and the interrupted summary trial resumed. [Brigadier A. C. C. Willway, C.B., C.B.E., T.D., D.L., Deputy Chairman, Surrey Quarter Sessions.]

Coroners' Court

Home Office circular

The Home Office have issued a circular (No. 68/1955, dated April 18, 1955) which is intended to replace all previous circulars issued to coroners from the Home Office relating to matters other than deaths from industrial accidents and diseases. The circular concerns post-mortem examinations and special examinations, inquests, registration of deaths, visiting forces and treasure trove.

Case and Comment

The reports of cases to which initials are appended hereunder have been specially prepared for *The Criminal Law Review* by the following reporters:—

J. D. Pennington, *Barrister-at-Law.*
Henry Palmer, *Barrister-at-Law.*

Appeal—*Death of appellant—continuation of appeal*

R. *v*. Rowe [1] (Court of Criminal Appeal: Lord Goddard C.J., Hilbery and Pearce JJ.: April 19, 1955) ([1955] 2 W.L.R. 1056; [1955] 2 All E.R. 234).

R. was convicted of false pretences and was sentenced to eighteen months' imprisonment. He gave notice of appeal to the Court of Criminal Appeal but died in prison before the appeal was heard. It was contended on behalf of his widow that she had an interest in the continuance of the appeal because she desired his name to be cleared. In the case of *Hodgson* v. *Lake* [1943] K.B. 15, the Divisional Court, where the appellant was dead, allowed the executors to continue the appeal because a fine had been imposed and there was a pecuniary interest:—

Held, dismissing the application, that an appeal in a case where the appellant was dead could only continue when the widow or the executor or the administrator had an interest in the continuance. That interest must be a legal interest and the court would not take notice of the widow's sentimental interest in clearing her husband's name. Nobody had an interest in setting aside this conviction or sentence (though it might be different if the sentence had been a fine) and, therefore, the appeal could not be entertained.

[H. P.]

Arrest—*"Lawful custody"—arrest by military authorities*

Hans *v*. The Queen [2] (Judicial Committee of the Privy Council: Lords Tucker and Somervell of Harrow and Mr. L. M. D. de Silva: March 14, 1955) ([1955] 2 W.L.R. 700).

Shortly after midnight on March 29, 1953, a United States naval shore patrol in Hamilton City, Bermuda, finding a U.S.

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[1] For the applicant: *Peter Lewis* (instructed by Giffen & Couch, St. Albans). The Crown was not represented.

[2] For the appellant: *Dingle Foot Q.C., Gilbert Dare* (instructed by A. L. Bryden & Williams). For the Crown: *D. A. Grant* (instructed by Charles Russell & Co.).

sailor who was absent over leave, arrested him and placed him in the naval patrol wagon, the door of which was secured by a wire hook on the outside. Shortly afterwards H., a Bermudan civilian, released the sailor by opening the door. H. was arrested by the Bermudan police and charged with having aided the sailor, a person in lawful custody, to escape from such custody contrary to section 111 of the Criminal Code of Bermuda. It was not disputed that the arrest of the sailor was lawful under United States law, but it was contended that he was not in "lawful custody" within the meaning of section 111 which should be construed as restricted to custody in connection with criminal proceedings cognisable by the Bermudan courts. H. was convicted:—

Held, that although the Criminal Code was designed primarily to deal with cases arising under the Bermudan criminal law, there was no reason for restricting the meaning of "lawful custody" as was contended. It extended to cover the confinement of a person whose arrest by the military was, as here, authorised by Bermudan law. Accordingly, H. was rightly convicted. [J. D. P.]

Evidence—*Bankers' books—books of the Bank of England*

R. *v*. LEWIS [3] (Bow Street Magistrates' Court: E. G. Robey, Esq., Stipendiary Magistrate: March 19, 1955) (*The Times*, March 21, 1955).

The defendants were charged with breaking and entering, and stealing £20,353 and foreign currency to the value of £166 from a joint-stock bank. Counsel for the prosecution proposed to trace certain banknotes from the Bank of England to the joint-stock bank (and thence to at least one of the defendants) by producing a certified true copy of the books of the Bank of England relative to the banknotes, under the powers of the Bankers' Books Evidence Act, 1879. Counsel for the defendants submitted that such evidence would be inadmissible; the Bankers' Books Evidence Act did not apply to the Bank of England as they did not make returns to the Commissioners of Inland Revenue and their books were not public documents:—

Held, the proposed evidence was inadmissible under the Act in a criminal prosecution.

[Reported by K. B. Edwards, *Barrister-at-Law*.]

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[3] For the prosecution: *Christmas Humphreys* (instructed by Solicitor for Metropolitan Police). For the first defendant: A. J. G. Hardwick, Solicitor. For the second defendant: *Edward Clarke* (instructed by Nathan Hershman & Co.). For the third defendant: *W. M. F. Hudson* (instructed by Dale & Newberry).

COMMENTARY. The Bankers' Books Evidence Act, 1879, s. 9, provides: "In this Act the expressions 'bank' and 'banker' mean any person, persons, partnership, or company carrying on the business of bankers and having duly made a return to the Commissioners of Inland Revenue, and also any savings bank certified under the Acts relating to savings banks, and also any post office savings bank."

See Archbold, 33rd ed., 472; Stone, 86th ed., 310.

Extradition—*Prisoner's right to call evidence—duty of magistrate*

R. *v.* GOVERNOR OF BRIXTON PRISON, *ex p.* SMYTH; R. *v.* ROBEY, *ex p.* SAME [4] (Q.B. Divisional Court: Lord Goddard C.J., Hilbery and Pearce JJ.: April 20, 1955).

S., while serving in the Pakistan Navy, was alleged to have misappropriated funds, the property of the Navy. He subsequently came to this country where he was arrested on a warrant under the Fugitive Offenders Act, 1881, to show cause why he should not be returned to Pakistan. At the hearing before the Bow Street magistrate, the prosecution called evidence raising a strong and probable presumption that S. had committed the offence. S. gave evidence in his defence and applied for an adjournment to enable him to obtain evidence from witnesses in Pakistan. The magistrate granted him two adjournments for this purpose but, the evidence not having been obtained, he refused to grant a further adjournment and committed S. to prison to await his return to Pakistan. S. applied for a writ of habeas corpus directed to the governor of the prison and for orders of mandamus and certiorari directed to the magistrate, on the ground that the magistrate wrongly refused S. an opportunity to produce the evidence of the witnesses:—

Held, that the magistrate had acted correctly in accordance with sections 5 and 29 of the Act and provided there was a prima facie case against S. he was perfectly entitled to commit S. to prison and to refuse to allow him to call further evidence. [J. D. P.]

COMMENTARY. The Fugitive Offenders Act, 1881, s. 5, provides that when an offender is brought before a magistrate the magistrate "shall hear the case in the same manner and have the same jurisdiction and powers, as near as may be (including the power to remand and admit to bail), as if the fugitive were charged with an offence committed within his jurisdiction." Where such evidence is produced as, according to the law ordinarily administered by the magistrate, raises a strong or probable presumption that the fugitive has committed the alleged offence the magistrate must commit the fugitive to prison to await his return.

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[4] For the applicant: *J. P. Eddy Q.C.*, *D. W. Powell* (instructed by Dixon Wood & Co.). For the governor and magistrates: *J. Maxwell Turner* (instructed by Director of Public Prosecutions). For the Government of Pakistan: *D. A. Kemp* (instructed by Sanderson, Lee, Morgan, Price & Co.).

Section 29 prescribes the magistrate's power to take depositions.

See Stone, 86th ed., 41, note (*e*).

Food and Drugs—*Slaughterhouses—licence—grounds for refusal*

YORK CITY COUNCIL *v.* J. C. WOOD & SON (YORK)[5] (Q.B. Divisional Court: Lord Goddard C.J., Hilbery and Pearce JJ.: April 28, 1955) (*The Times,* April 29, 1955).

The council, acting as the local authority for the purposes of the Food and Drugs Act, 1938, refused applications by the respondents for the grant of a licence to use the premises in York as a slaughterhouse on the ground that the premises were not suitable for such use by reason of their situation and locality; they contended that use of the premises as a slaughterhouse would constitute a nuisance to the persons residing in close proximity to them, and that it was not reasonably practicable to render them suitable owing to their proximity to dwelling-houses. The justices allowed the respondents' appeal from this refusal and their decision was upheld by quarter sessions. On appeal by the council:—

Held, dismissing the appeal, that the only ground on which a licence could be refused under the Act was that the premises themselves were not suitable for use as a slaughterhouse, when a notice specifying the work to be carried out to render them suitable must be served. There was no power to refuse a licence on the ground that the locality was not suitable. [J. D. P.]

COMMENTARY. The Food and Drugs Act, 1938, s. 57, provides: "(1) It shall not be lawful (*a*) for the occupier of any premises to use them as a slaughter-house . . . or permit them to be so used, unless he holds a licence granted under this section by the local authority. (2) . . . the authority . . . (*b*) shall not refuse to grant . . . a licence . . . unless they are satisfied that the applicant is not a proper person to keep such a place, or that the premises named in the application are not suitable for use for the purpose in question. (3) If . . . it appears to the local authority that the premises are not suitable for use as a slaughter-house . . . unless they are satisfied that it is not reasonably practicable to render the premises suitable, they shall adjourn the application and serve on the applicant a notice specifying the works which . . . must be carried out in order to render the premises suitable."

See Stone, 86th ed., 917.

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[5] For the appellants: *E. A. Greenwood* (instructed by Sharpe, Pritchard & Co. for T. C. Benfield, York). For the respondents: *Alastair Sharp* (instructed by Crombie, Wilkinson & Robinson, York).

Indemnity—*Damages arising from commission of crime—lack of knowledge*

ROAD TRANSPORT & GENERAL INSURANCE CO. *v.* ADAMS, IRWIN (Third Party)[6] (Queen's Bench Division: Roxburgh J.: March 9, 1955).

A. agreed to hire from I. for a single day a motor-car on the basis that A. was to drive it. A. asked I. whether the car was insured, and I. said that it was. If A. had looked at the insurance certificate which was in the car he would have seen that the car was not covered if he drove it. He took the car on the road, was involved in a collision and subsequently was charged and convicted of driving an uninsured vehicle. As a result of the collision, claims were made against A. and I. The plaintiff insurance company agreed to take over and defend the claims on behalf of A. and I. who authorised the company to accept liability, agreeing to reimburse the company for all sums paid in respect of such settlement. The company settled the claims for £226 and in the present action recovered judgment against A. and I. for that sum. In the same action A. issued a third party notice against I. claiming indemnity from him on the ground that his liability arose by reason of I.'s breach of warranty. I. contended that since the damages which A. was liable to pay arose out of a crime committed by him, the court should not grant relief:—

Held, applying *Burrows* v. *Rhodes* [1899] 1 Q.B. 816, that A., having been led by I. to believe in the existence of a fact which, if it had been true, would have been an answer to any imputation of illegality, was entitled to indemnity from I. [J. D. P.]

COMMENTARY. In *Burrows* v. *Rhodes* it was held that where a person is induced by the fraudulent misrepresentation of another to do an act which, because of such misrepresentation he does not believe to be illegal, but which is in fact a criminal offence, he has a right of action against the person so inducing him for damages sustained by him in consequence of his having done the act.

Local Government—*Member of council—failure to disclose interest in lease*

DIRECTOR OF PUBLIC PROSECUTIONS *v.* BARNES[7] (Q.B. Divisional Court: Lord Goddard C.J., Hilbery and Pearce JJ.: April 21, 1955) (*The Times*, April 22, 1955).

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[6] For Adams: *Michael Hoare* (instructed by Waterhouse & Co., for Burgess & Chesher, Bedford). For Irwin: *T. H. K. Berry* (instructed by Wedlake Letts & Birds for Alexander Farr & Son, Bedford).

[7] For the prosecutor: *Roger Winn* (instructed by the Director of Public Prosecutions). For the defendant: *H. S. L. Rigg* (instructed by W. & R. Hodge & Halsall, Southport).

The defendant was a member of the Southport Borough Council. A company, of which the defendant was a shareholder, made proposals to the council to lease land from them. At a meeting of the parks committee it was resolved that subject to the consent of the Minister of Housing and Local Government, the company should be offered a lease. This decision was confirmed by the council. At a meeting of the town planning committee at which the defendant was present the minutes of a further meeting of the parks committee were read and the defendant took part in the discussion which followed. The defendant was charged under section 76 (1) of the Local Government Act, 1933, with failing to disclose that he had an indirect pecuniary interest in the matter the subject of consideration at the meeting of the town planning committee. The magistrates dismissed the information. On appeal by the prosecutor:—

Held, allowing the appeal, that it was clear that the defendant had enough shares in the company to give him an indirect pecuniary interest and he should have disclosed his interest. It was not a matter of mitigation that he did not understand what the statute required him to do and the case should go back to the magistrates with a direction that they should convict. [J. D. P.]

COMMENTARY. The defendant was subsequently convicted by the justices and fined £25.

The Local Government Act, 1933, s. 76, provides: "(1) If a member of a local authority has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter, and is present at a meeting of the local authority at which the contract or other matter is the subject of consideration, he shall at the meeting, as soon as practicable after the commencement thereof, disclose the fact, and shall not take part in the consideration or discussion of, or vote on any question with respect to, the contract or other matter . . . (2) For the purposes of this section a person shall . . . be treated as having indirectly a pecuniary interest . . . if (*a*) he . . . is a member of a company . . . with which the contract is made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration."

See Stone, 86th ed., 1489.

Magistrates' Courts—*Committal to quarter sessions with view to Borstal training—repeal and replacement of enabling Act—validity*

R. *v.* TAYLOR AND CASTLE [8] (Nottingham City Quarter Sessions: Christopher Shawcross, Q.C., Recorder: March 22, 1955).

The defendants, two girls aged seventeen and eighteen, pleaded guilty before a magistrates' court to five charges of larceny and the magistrates decided to commit them to quarter sessions with a view to sentence to Borstal training. The memorandum of conviction by the magistrates' court read: "Remanded until March 22, 1955, quarter sessions in custody with a recommendation for Borstal training s. 20 Criminal Justice Act, 1948." Counsel for the defendants submitted that the committal was invalid because the magistrates had purported to exercise powers given by section 20 (3) of the Criminal Justice Act, 1948, which had been repealed by the Magistrates' Courts Act, 1952, and replaced by section 28 (1) of that Act:—

Held, the committal was on the face of it invalid. The magistrates could have committed the defendants to quarter sessions under section 28 of the Act of 1952 for sentence in accordance with the provisions of section 20 of the Act of 1948, and presumably intended to do so, but the court had no power to correct the error. The defendants were accordingly discharged.

The defendants later appeared again before the magistrates and were placed on probation for two years.

[Reported by W. David Crane, *Clerk of the Peace.*]

COMMENTARY. The Magistrates' Courts Act, 1952, s. 28, provides: "Where a person is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment, then, if on the day of conviction he is not less than sixteen but under twenty-one years old and the court is satisfied . . . that it is expedient . . . that he should undergo a period of training in a Borstal institution, the court may commit him in custody to quarter sessions for sentence in accordance with the provisions of section twenty of the Criminal Justice Act, 1948."

Section 20 of the Act of 1948 prescribes the procedure to be followed on such a committal.

See Archbold, 33rd ed., 244–5; Stone, 86th ed., 65, 172.

Magistrates' Courts—*Fugitive offenders—duty of magistrate.* See R. *v.* GOVERNOR OF BRIXTON PRISON, *ex p.* SMYTH, p. 375, above.

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[8] For the prosecution: *C. H. G. Leaf* (instructed by the Town Clerk, Nottingham). For the first defendant: *E. F. Jowitt* (under the Poor Prisoners' Defence Act, 1930). For the second defendant: *A. T. R. Fletcher* (under the Poor Prisoners' Defence Act, 1930).

Merchant Shipping—*Compulsory pilotage—liability to—ship normally engaged in home trade*

SMITH *v.* VEEN[9] (Q.B. Divisional Court: Lord Goddard C.J., Hilbery and Pearce JJ.: April 28, 1955) (*The Times*, April 29, 1955).

A ship, which traded regularly within home trade limits and was exempted from compulsory pilotage within the London district under by-laws made by the pilotage authority of the London Pilotage District under section 11 (4) of the Pilotage Act, 1913, set out from this country on a voyage to Oslo, a port beyond the limits specified for home trade ships under section 742 of the Merchant Shipping Act, 1894. The master refused to carry a pilot through the London pilotage district. On a prosecution under section 11 (1), (2) of the Act of 1913, the magistrates, dismissing the informations, were of opinion that since the ship was habitually engaged in home trade, she did not cease to be an "excepted ship" on her outward voyage to a non-home trade port and therefore did not require a pilot. The prosecutor appealed.

Held, allowing the appeal, that even though the ship was normally engaged in home trade, if she set off on a voyage which was not within the home trade limits it was necessary to carry a pilot because she was no longer engaged in home trade. [J. D. P.]

COMMENTARY. The Pilotage Act, 1913, s. 11, provides: "(1) Every ship (other than an excepted ship) while navigating in a pilotage district in which pilotage is compulsory . . . shall be either (*a*) under the pilotage of a licensed pilot of the district; or (*b*) under the pilotage of a master or mate possessing a pilotage certificate for the district who is bona fide acting as master or mate of the ship. (2) If any ship . . . in circumstances in which pilotage is compulsory under this section, is not under pilotage as required by this section, after a licensed pilot of the district has offered to take charge of the ship, the master of that ship shall be liable in respect of each offence to a fine."

See Stone, 86th ed., 1601.

National Service—*Liability to serve—British subject—temporary residence*

ULLAH *v.* BLACK[10] (Q.B. Divisional Court: Lord Goddard C.J., Hilbery and Pearce JJ.: April 22, 1955) (*The Times*, April 23, 1955).

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[9] For the prosecutor: *J. V. Naisby Q.C., H. E. G. Browning* (instructed by Freshfields). For the defendant: *Ashton Roskill Q.C., B. S. Eckersley* (instructed by Sinclair, Roche & Temperley).

[10] For the defendant: *F. M. Abbassi, R. A. Muhammadi* (instructed by A. de Fleury, Gassman & Co.). For the prosecutor: *S. B. R. Cooke* (instructed by Solicitor, Ministry of Labour).

The defendant was born in Bengal, then in British India, in 1930. He was a British subject by birth and a citizen of Pakistan. In 1951 he came to this country to assist a relative in his business. On a charge of failing to obey a notice served on him under the National Service Act, 1948, requiring him to have a medical examination, the magistrate held ([1955] Crim.L.R. 115) that the defendant was not here for a temporary purpose only, and, being a citizen of Pakistan he had British status and was liable for national service. The defendant appealed.

Held, dismissing the appeal, that the defendant was given the status of a British subject by section 1 of the British Nationality Act, 1948, and as his residence in this country was not of a temporary nature he was liable for military service. [J. D. P.]

Police—*Injury caused to policeman in crash—right of Crown to compensation*

ATT.-GEN. FOR NEW SOUTH WALES *v.* PERPETUAL TRUSTEE CO.[11] (Judicial Committee of the Privy Council: Viscount Simonds, Lords Morton of Henryton, Radcliffe, Cohen and Somervell of Harrow: March 14, 1955) ([1955] 2 W.L.R. 707; [1955] 1 All E.R. 846).

H., a member of the New South Wales police force, was injured while riding in a tram-car when a motor-vehicle came into collision with it. On an information by the Attorney-General against the owners of the motor-vehicle it was alleged that H.'s injuries had disabled him from the performance of his duties, but that while he was disabled he received his salary and allowances although during that period the Crown was deprived of his services, and that on his discharge he was paid a pension which, but for his disablement, he would not have received for a long time. The Attorney-General on behalf of the Crown claimed to recover the salary, allowances and pension paid and to be paid to H. On the question whether a constable stood in such relation to the Crown that an action *per quod servitium amisit* lay at the suit of the Crown for the loss of his services by reason of the tortious act of a wrongdoer:—

Held, that there was a fundamental difference between the domestic relation of servant and master and that of the holder of a public office and the State which he is said to serve. The constable fell within the latter category. His authority was original not delegated, and was exercised at his own discretion by virtue of his office. He was a ministerial officer exercising statutory rights independent of contract. Accordingly, the action was not maintainable. [J. D. P.]

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[11] For the Crown: *Frank Gahan Q.C., J. G. Le Quesne* (instructed by Light & Fulton). For the defendants: *Viscount Hailsham Q.C., Dingle Foot Q.C.* (instructed by Bell, Brodrick & Gray).

Quarter Sessions—*Committal to—invalid committal.* See R. *v.* TAYLOR AND CASTLE, p. 379, above.

Road Traffic—*Accident—failure to notify—meaning of accident*

QUELCH *v.* PHIPPS [12] (Q.B. Divisional Court: Lord Goddard C.J., Hilbery and Pearce JJ.: April 28, 1955) ([1955] 2 W.L.R. 1067; [1955] 2 All E.R. 302).

An omnibus driver was driving his omnibus along a road when he slowed down at a junction as the traffic lights were at red, but he did not stop because they changed to green before it was necessary to do so. While the omnibus was crossing the junction a passenger, notwithstanding warnings by the conductor, stepped off the platform and fell out on to the road and was injured. The omnibus stopped at an authorised stopping place and the conductor informed the driver of the accident and then took the passenger home. He did not give his own or the driver's name or the number of the omnibus. The driver failed to report the accident at a police station or to a police constable within twenty-four hours of the occurrence. On a charge under section 22 of the Road Traffic Act, 1930, the justices, being of the opinion that " accident " within the meaning of the section involved some kind of collision, dismissed the information. The prosecutor appealed.

Held, allowing the appeal, that, to be guilty of an offence under the section, there must be some direct connection between the vehicle and the occurrence of the accident. In the present case it was impossible to say that the accident had not occurred owing to the presence of the vehicle on the road; accordingly, the driver in failing to give his name and address or to notify the police had committed an offence. [J. D. P.]

COMMENTARY. See Stone, 86th ed., 2053.

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[12] For the prosecutor: *Frank Whitworth* (instructed by Sharpe, Pritchard & Co., for H. J. A. Astley, Oxford). For the defendant: *M. R. Nicholas* (instructed by Pattison & Brewer).

Road Traffic—*Disqualification—sentence exceeding maximum disqualification allowed*

R. *v.* SHOREHAM-BY-SEA JUSTICES, *ex p.* PURSEY [13] (Q.B. Divisional Court: Lord Goddard C.J., Hilbery and Pearce JJ.: April 21, 1955) (*The Times*, April 22, 1955).

P. was found guilty of careless driving contrary to section 12 of the Road Traffic Act, 1930, and was ordered to be disqualified from driving for eighteen months, whereas the statute only provided for a maximum disqualification of three months in such a case. On an application by P. for certiorari to quash the order:—

Held, granting the application, that it was most desirable that the law should be amended so that where an order was made by magistrates in excess of that which the law allowed, the court could alter the order by imposing the sentence which the law did allow; as it was, the court could do no more than quash the order in the present case. [J. D. P.]

COMMENTARY. See Stone, 86th ed., 261.

Road Traffic—*Driving uninsured vehicle—effect of indorsement*

ALLEN *v.* JOHN [14] (Q.B. Divisional Court: Lord Goddard C.J., Cassels and Lynskey JJ.: January 14, 1955) ([1955] 1 Lloyd's Rep. 27).

B. H. Co. owned a lorry which the company insured under a policy whereby the underwriters were not to be liable for any loss or damage while the vehicle was "being used for purposes other than that stated in the schedule herein." By the schedule the employment of the lorry was stated to be for use "in connections with the insured's business under 'C' hiring licence, including social, domestic and pleasure purposes with the insured's consent." The lorry was hired to B. S. Ltd., who were the holders of a "C" licence, and an indorsement was attached to the policy providing: "It is hereby understood and agreed notwithstanding anything contained herein to the contrary that the benefits granted under section 1 (third party) extend to cover the third party legal liability of B. S. Ltd. and also holders of relative 'C' hiring licences, whilst the insured vehicle is being used on their behalf." The lorry was hired out for reward by B. S. Ltd.

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[13] For the applicant: *A. J. Irvine* (instructed by Amery-Parkes & Co. for Gates & Co., Shoreham). The justices did not appear and were not represented.

[14] For the defendants: *Viscount Hailsham Q.C., J. R. C. Samuel-Gibbon* (instructed by Lee, Bolton & Lee for Roythorne & Co., Boston, Lincs). For the prosecutor: *W. W. Stabb* (instructed by Turner & Evans for John Q. Clayton & Co., Luton).

and the driver and B. S. Ltd. were convicted of driving or causing the lorry to be driven when not insured against third party risks. On appeal:—

Held, allowing the appeal, that although the insurers probably never meant to extend the insurance to anybody except the holder of a "C" licence, the indorsement clearly gave complete cover to B. S. Ltd., and therefore they had committed no offence. [J. D. P.]

Road Traffic—*Driving uninsured vehicle—policy covering servant while acting in the course of his employment*

BALLANCE *v*. BROWN[15] (Q.B. Divisional Court: Lord Goddard C.J., Hilbery and Pearce JJ.: April 21, 1955).

H., who carried on the business of a scrap metal merchant, and who had from time to time bought scrap metal from B., instructed B. to take his (H.'s) car to B.'s home and to collect H. the following day to go on a journey for the purposes of H.'s business. H. also told B. to do any business he could. Instead of going straight home B., without the express permission or prohibition of H., took a woman friend to her home, a deviation involving 2½ miles' extra journey. The car was insured by H. for private use by a policy which provided that the insurance company would "treat as though he were the insured any person in the insured's employ who is driving such a vehicle on the insured's order or with his permission for the purpose of the business of the insured." B. was charged with unlawfully using the car without there being in force a policy of insurance, contrary to section 35 (1) of the Road Traffic Act, 1930. The justices dismissed the information. The prosecutor appealed.

Held, dismissing the appeal, (1) if B. was in H.'s employ it could not be said that in making the deviation he was on a frolic of his own; (2) distinguishing *Lyons* v. *May* [1948] 2 All E.R. 1062, in construing the word "employ" in the policy it could be used in its widest sense; on the facts B. was in the employ of H. and the car was therefore covered by insurance. [J. D. P.]

COMMENTARY. In *Lyons* v. *May*, a garage proprietor drove a motor-lorry which he had been repairing back to the lorry owner's premises at the request of the owner. It was held that he was not a person in the lorry owner's employment while he was doing so.

See Stone, 86th ed., 2060.

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[15] For the prosecutor: *Paul Wrightson* (instructed by Freeman & Son for W. Lawrence Allen, Barrow-in-Furness). For the defendant: *E. Brian Gibbens* (instructed by Burton, Yeates & Hart for Hart Jackson & Sons, Barrow-in-Furness).

Sentence—*Corrective training—petty theft by prisoner with bad record*

R. *v.* ROBINSON [16] (Court of Criminal Appeal: Lord Goddard C.J., Hilbery and Pearce JJ.: April 25, 1955) (*The Times*, April 26, 1955).

R. was convicted of the larceny of a blanket and sentenced to four years' corrective training. R. had nine previous convictions for dishonesty and two for malicious damage. His only substantial sentences had been twelve months' imprisonment in 1951 for attempted shopbreaking, eighteen months in 1952 for three shopbreakings and twelve months in April, 1953, for two shopbreakings. R. appealed to the Court of Criminal Appeal against his sentence.

Held, that although R. had an unsatisfactory record, the offence for which he had been convicted was only that of stealing a blanket on a very cold, wet night, when he was sleeping rough, and the court would not say that he should lose his liberty for four years for that very petty theft. The sentence would be reduced to imprisonment for such time as would allow of R.'s discharge immediately. [H. P.]

COMMENTARY. In *R.* v. *Apicella* (1949) 34 Cr.App.R. 29, it was stated in the Court of Criminal Appeal that "before a sentence of corrective training is passed, it is not enough that the mere elements of the statute have been fulfilled and that the prisoner is eligible for corrective training, but the court must consider all the facts of the case and the design of the statute before imposing sentence."

See Archbold, 33rd ed., 1523.

Sentence—*Corrective training—service of notice of previous convictions on court*

R. *v.* FOSTER [17] (Court of Criminal Appeal: Lord Goddard C.J., Hilbery and Pearce JJ.: April 19, 1955).

F. was sentenced by the Recorder of Carlisle to four years' corrective training. A police officer gave evidence of the service of the notice of previous convictions on the prisoner, but did not say that he had also served the notice on the court. F. appealed to the Court of Criminal Appeal against his sentence.

Held, dismissing the appeal, that although formal evidence was usually given, there was no ground for interfering with the sentence. It was not necessary that formal evidence should have been given to the court that the notice had been served on the court, because if the notice had not been served the clerk of the peace would have called attention to it, and the court could see for itself if the notice was before it. [H. P.]

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[16] The appellant appeared in person. The Crown was not represented.

[17] The appellant did not appear and was not represented. The Crown was not represented.

COMMENTARY. The Criminal Justice Act, 1948, s. 23 (1), provides: "For the purpose of determining whether an offender is liable to be sentenced to corrective training . . . no account shall be taken of any previous conviction or sentence unless notice has been given to the offender and to the proper officer of the court at least three days before the trial that it is intended to prove the conviction or sentence."

See Archbold, 33rd ed., 1531.

Sentence—*Disqualification from driving—sentence exceeding maximum disqualification allowed.* See R. *v.* SHOREHAM-BY-SEA JUSTICES, *ex p.* PURSEY, p. 383, above.

Sentence—*Life imprisonment—reasons for imposing*

R. *v.* GRANTHAM [18] (Court of Criminal Appeal: Lord Goddard C.J., Hilbery and Pearce JJ.: April 25, 1955) (*The Times*, April 26, 1955).

G. pleaded guilty at Norfolk Assizes to a charge of shooting with intent to murder. G., who was nineteen years of age, was an aircraftman in the Royal Air Force. He conceived that he had been insulted by another airman, Robinson, with whom there was a scuffle, and G. was jabbed in the chin with a fork. Thereupon G. took a rifle from another man's locker, loaded the magazine with two cartridges and fired both at Robinson, the first shot shattering Robinson's shoulder and the second penetrating his lung. Oliver J. sentenced G. to fifteen years' imprisonment and G. appealed to the Court of Criminal Appeal against that sentence.

Held, that the only proper sentence in this case was imprisonment for life. Section 27 of the Prison Act, 1952, gave to the Home Secretary an unfettered discretion as to when persons serving sentences of life imprisonment should be released. If, after a considerable period, the Secretary of State came to the conclusion that G. could safely be released, he could be released on licence. On the other hand, if it was reported to him that G. could not be safely released, he would be kept in custody. The court was of the opinion that the gravity of the case justified a sentence of life imprisonment and wished to emphasise that they gave it out of mercy to the accused. [H. P.]

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[18] For the appellant: *R. T. Paget Q.C., Michael Havers* (instructed by Russell Steward, Stevens & Hipwell, Norwich). The Crown was not represented.

COMMENTARY. The Prison Act, 1952, s. 27, provides: "(1) The Secretary of State may at any time if he thinks fit release on licence a person serving a term of imprisonment for life subject to compliance with such conditions, if any, as the Secretary of State may from time to time determine. (2) The Secretary of State may at any time by order recall to prison a person released on licence under this section, but without prejudice to the power of the Secretary of State to release him on licence again."

Sentence—*Supervision order—sentence of imprisonment—imprisonment in default of payment of fine*

R. *v*. DRISCOLL [19] (Court of Criminal Appeal: Lord Goddard C.J., Ormerod and Gorman JJ.: April 4, 1955) ([1955] 2 W.L.R. 970; [1955] 2 All E.R. 113).

On January 12, 1955, the Court of Criminal Appeal, without hearing argument, refused D. leave to appeal against a supervision order and rejected his contention that a sentence of imprisonment in default of payment of a fine was not a "sentence of imprisonment" within the meaning of section 22 (1) of the Criminal Justice Act, 1948 ([1955] Crim.L.R. 194). Subsequently, on March 17, 1955, a further application for leave to appeal was made and the court granted leave. D. had been twice previously convicted and was, in respect of one of the convictions, fined £310 19s., with an alternative of three months' imprisonment in default of payment. His wife had paid £122 and D. had spent some time in prison in respect of the £188 19s. unpaid balance. He now appealed against his sentence.

Held, that the view the court took on the first application was wrong. The definition of the term "sentence" in section 80 of the Criminal Justice Act, 1948, "includes an order for detention in a detention centre, an order for custody in a remand home under section 54 of the Children and Young Persons Act, 1933, and an order sending an offender to an approved school, but does not include a committal in default of payment of any sum of money." The court was of opinion that "payment of any sum of money" did include payment of a fine and, accordingly, decided that a sentence of imprisonment in default of payment of a fine was not a sentence of imprisonment which could be taken into account for the purposes of section 22 (1) of the Criminal Justice Act, 1948. The supervision order would, therefore, be set aside. [H. P.]

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[19] For the appellant: *S. A. Morton* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *J. C. Phipps* (instructed by the Director of Public Prosecutions).

Town and Country Planning—*Advertisements—unlawful posting—advertisements posted by independent contractor*

JOHN *v.* REVEILLE NEWSPAPERS[20] (Q.B. Divisional Court: Lord Goddard C.J., Ormerod and Gorman JJ.: February 28, 1955) ((1955) 5 P. & C.R. 95).

Posters had been given by the defendants to a contractor, M., for distribution. M. was an entirely independent contractor and had no contract with the defendants nor was he paid any wages or commission by them. He was expected to put the posters in suitable and authorised places, but within this limitation was given a free hand by the defendants. M., without any authority from the defendants, affixed several of the posters to a public urinal. The defendants were charged under section 32 of the Town and Country Planning Act, 1947, with unlawfully displaying the advertisements contrary to regulations made under section 31 of the Act. The justices were of the opinion that the posters were displayed without the knowledge or consent of the defendants, and they were entitled to rely on the defence afforded by the proviso to section 32 (4) of the Act; that M. posted the bills as an independent contractor, and that the defendants were not liable for his unlawful acts. They accordingly dismissed the information. The prosecutor appealed.

Held, dismissing the appeal, that the justices having found that the defendants had no knowledge of and had given no consent to M.'s action, they were protected by the proviso. [J. D. P.]

COMMENTARY. The Town and Country Planning Act, 1947, s. 32, provides: "(3) . . . if any person displays an advertisement in contravention of the provisions of the regulations [made under section 31] he shall be guilty of an offence . . . (4) provided that a person shall not be guilty of an offence . . . by reason only . . . that his goods, trade, business or other concerns are given publicity by the advertisement, if he proves that it was displayed without his knowledge or consent."

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[20] For the prosecutor: *David Pennant* (instructed by Torr & Co., for Richard John, Cardiff). For the defendants: *John Rutter* (instructed by Rhys Roberts & Co.).

Trial — *Questions addressed by the trial judge to the prisoner — whether any miscarriage of justice*

R. *v.* WILLIAMS [21] (Court of Criminal Appeal: Lord Goddard C.J., Hilbery and Pearce JJ.: April 25, 1955) (*The Times*, April 26, 1955).

W. was convicted before Hallett J. at Hampshire Assizes of the murder of an old lady. He appealed against his conviction to the Court of Criminal Appeal on the ground, *inter alia*, that the judge had unduly interfered with the conduct of the case by asking so many questions while W. was in the witness box as to amount to a miscarriage of justice:—

Held, dismissing the appeal, that if a judge thinks that a case has not been thoroughly explored, he is entitled to put as many questions as he likes to witnesses. However, here the case was being conducted by able members of the Bar, who could be trusted to conduct both the prosecution and defence fully and fairly, and, with all respect to the judge, it was a pity that he had asked as many questions as he had done. But it was impossible to say that there had been any possibility of a miscarriage of justice and there were no grounds upon which the court could interfere. [H. P.]

COMMENTARY. See Archbold, 33rd ed., 528.

Acts and Orders

Agriculture

See TRANSFER OF FUNCTIONS (MINISTRY OF FOOD) ORDER, p. 391, below.

Animals

IMPORTATION OF BEES ORDER, 1955 (S.I. No. 589): operative July 1, 1955. Bees in a skep or in any other fixed-comb hive may not be imported into Great Britain. No bees may be imported unless, before they are dispatched, a certificate that they are free from disease, in the form prescribed in the Schedule, is sent from the responsible department of the country of origin. A copy of the certificate must accompany the consignment.

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[21] For the appellant: *P. Malcolm Wright Q.C., Robert Hughes* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *H. J. Phillimore Q.C., Alastair Morton* (instructed by the Director of Public Prosecutions).

The Order does not apply to bees imported from the Isle of Man.

For penalties for contraventions, see section 10 of the Agriculture (Miscellaneous Provisions) Act, 1954.

Armed Forces

NATIONAL SERVICE ACT, 1955 (3 & 4 Eliz. 2, c. 11): operative March 29, 1955. The upper age limit for liability to national service is extended in certain cases. The Act applies, subject to certain specified exceptions, where a person has attained this limit (twenty-six years in the normal case and thirty years for registered doctors and dentists) since January 1, 1955, and was either subject to registration immediately before or was not then so subject only because he was not ordinarily resident in Great Britain, although he had previously been ordinarily resident at some time after attaining the age of seventeen years and eight months; and who during the year ending with his attaining the upper age limit was absent from Great Britain for a period of not less than twenty-eight days. The Minister of Labour and National Service may serve on such persons a notice requiring them to submit themselves for medical examination under section 8 of the National Service Act, 1948, although they are not subject to registration. If such a notice is served the Act of 1948 applies as if for references to the upper age limit there were substituted references to the age of thirty-six and as if any requirement that a person should be ordinarily resident in Great Britain before being liable to national service were omitted.

Assizes

ASSIZES (NORTH-EASTERN CIRCUIT) ORDER, 1955 (S.I. No. 560): operative May 2, 1955. For the purposes of assizes, the county of York is divided into three divisions, namely the North and East Riding Division, the Leeds Division and the Sheffield Division; except for the Spring assizes the assizes for the first will be held at York, for the second at Leeds and for the third at Sheffield. For the purposes of the Spring assizes the three divisions will be united with the county of the City of York under the name of the Spring Assize County No. 3 and the assizes will continue to be held at Leeds.

The Orders in Council dated June 10, 1864, and July 9, 1864, and S.R. & O. 1917, No. 119, are revoked.

Birds

WILD BIRDS (EGGS OF COMMON BIRDS) ORDER, 1955 (S.I. No. 545): operative April 8, 1955. It is not an offence under the Protection of Birds Act, 1954, to take or destroy the eggs of the blackbird, chaffinch, coot, greenfinch, black-headed gull, hedge-sparrow, linnet, moorhen, robin, skylark, mistle thrush, song thrush or wren except in areas specified as bird sanctuaries in which eggs are protected.

See WILD BIRDS (EGGS OF COMMON BIRDS) (SCOTLAND) ORDER, p. 394, below.

Customs and Excise

EXPORT OF GOODS (CONTROL) (CONSOLIDATION) ORDER, 1955 (S.I. No. 518): operative April 12, 1955. The Order of 1954 (S.I. No. 118; see [1954] Crim.L.R. 312) and the Orders amending it are consolidated without further amendment.

Defence Regulations

SUPPLIES AND SERVICES (DEFENCE PURPOSES) ORDERS IN COUNCIL: ISLE OF MAN (S.I. No. 556); JERSEY (S.I. No. 557); GUERNSEY (S.I. No. 558): all operative April 18, 1955. Section 1 of the Supplies and Services (Defence Purposes) Act, 1951, which provides that the purposes for which certain Defence Regulations may be extended shall include defence and the maintenance or restoration of peace in any part of the world, applies with certain adaptations to the Isle of Man, Jersey and Guernsey.

Food and Drugs

TRANSFER OF FUNCTIONS (MINISTRY OF FOOD) ORDER, 1955 (S.I. No. 554): operative April 7, 1955. The Ministry of Food is dissolved and the functions of the Minister are transferred. A number of Scottish functions are transferred to the Secretary of State and other functions are to be exercised by the Minister of Agriculture and Fisheries and the Secretary of State jointly; the remainder are transferred to the Minister of Agriculture and Fisheries, now the Minister of Agriculture, Fisheries and Food.

See MILK (SPECIAL DESIGNATIONS) (SPECIFIED AREAS) (SCOTLAND) ORDER, p. 394, below.

London

The following Orders have been made detailing prescribed routes: S.I. 1955, Nos. 605 (Chigwell); 606 (West Ham).

Mines and Quarries

COAL MINES REGULATION (SUSPENSION) ORDER, 1955 (S.I. No. 549): operative May 1, 1955. In coal mines from May 1, 1955, to April 30, 1956, the operation of section 1 of the Coal Mines Regulation Act, 1908, which limits the number of hours that a workman may be below ground, and section 3, which contains a power to extend those hours on a limited number of days each year, is suspended on any Friday after two o'clock in the afternoon and on any Saturday before that hour.

Northern Ireland

NORTHERN IRELAND ACT, 1955 (3 & 4 Eliz. 2, c. 8): operative March 29, 1955. The power of the High Court in Northern Ireland to hear and determine appeals by way of case stated from a court of summary jurisdiction under section 2 of the Summary Jurisdiction Act, 1857, as substituted by section 10 of the Criminal Justice Act (Northern Ireland), 1945, is transferred to the Court of Appeal in Northern Ireland (s. 2).

The Parliament of Northern Ireland has power to enact laws relating to the appointment, removal, remuneration, jurisdiction or functions of coroners and coroners' juries (s. 5).

Official Secrets

OFFICIAL SECRETS (CYPRUS) ORDER, 1955 (S.I. No. 564): operative April 7, 1955. The offices of main general headquarters and the joint services departments situated in Wolseley Barracks, Nicosia, are declared prohibited places for the purposes of the Official Secrets Act, 1911.

Pensions

See POLICE PENSIONS REGULATIONS, below and p. 394.

Police

POLICE PENSIONS REGULATIONS, 1955 (S.I. No. 480); No. 2 (S.I. No. 481): both operative April 25, 1955. The Regulations of 1949–1953 are consolidated with certain amendments and cease to have effect save in relation to deaths or retirements before April 25, 1955. The principal changes are (1) the widow of a re-engaged pensioner, who was serving on September 1, 1918, is entitled to an ordinary pension; (2) provision is made for larger discretionary increases in widows' pensions and children's allowances; (3) a supplemental pension payable to a regular policeman who is not in receipt of an ordinary, short service or ill-health pension may be cancelled if his disability ceases.

The No. 2 Regulations relate to awards under the 1949 Regulations, in respect of deaths between July 1, 1949, and April 25, 1955, and under the 1948 Regulations in respect of deaths before July 1, 1949. Widows' pensions and children's allowances may be increased by a larger amount in cases where discretionary increases are permitted and the extent of the abatement of a widow's pension by National Insurance awards is adjusted.

ROYAL IRISH CONSTABULARY (WIDOWS' PENSIONS) REGULATIONS, 1955 (S.I. No. 529): operative April 25, 1955. An award under the 1954 Regulations ([1954] Crim.L.R. 646) will not be made if a widow's income, after deducting the prescribed allowances, exceeds 40s. a week (32s. 6d. under the previous regulations). An award combined with a widow's other income should secure to her 40s. a week (32s. 6d. previously).

Road Traffic

MOTOR VEHICLES (CONSTRUCTION AND USE) REGULATIONS, 1955 (S.I. No. 482): operative April 2, 1955. The Regulations of 1951 and Orders amending them are consolidated with certain further amendments. The principal changes are (1) the maximum overall width of certain goods vehicles or vehicles designed to form part of articulated vehicles and of certain trailers is increased (rr. 37, 54); (2) the maximum overall length of an articulated vehicle is increased to 35 feet and that of other motor-vehicles with four wheels, except public service vehicles, to 30 feet (r. 6); (3) there is no provision as to the maximum unladen weight of locomotives; with certain exceptions the maximum laden weight must not exceed 20½ tons (r. 65); (4) changes are made in the provisions concerning the maximum laden weights of other motor-vehicles and trailers (rr. 67–72); (5) restrictions are placed on the width of loads which may be carried; if it is not reasonably practicable to comply with these restrictions a load exceeding the prescribed width may be carried where notice is given to the police containing particulars of the journey to be made and the journey is made in accordance with those particulars. The restrictions do not apply to the carriage of loose agricultural produce not baled or crated (r. 102); (6) the braking systems of locomotives registered on or after June 1, 1955, will be required to comply with provisions similar to those made for motor-tractors (r. 32); (7) direction indicators on trailers constructed on or after July 1, 1955, must comply with certain prescribed conditions (r. 25 and Sched. 2); (8) suitable foot supports or rests must be provided on a two-wheeled motor-cycle when any passenger is carried astride it (r. 101).

For penalties for contraventions of the regulations, see r. 104 and sections 111 and 113 of the Road Traffic Act, 1930.

Salmon and Freshwater Fisheries

DEVON RIVER BOARD (FISHERIES) ORDER, 1955 (S.I. No. 543): operative April 5, 1955. The Board may fix the annual close season for salmon netting so that it commences later than September 1 but not later than December 1 and in such waters as the Board may specify the days comprising the season need not be successive days.

Scotland

Birds

WILD BIRDS (EGGS OF COMMON BIRDS) (SCOTLAND) ORDER, 1955 (S.I. No. 563): operative April 8, 1955. Except on Sundays and Christmas Day it is not an offence to take or destroy the eggs of the wild birds specified in the schedule to the Order, unless they are found in bird sanctuaries where the eggs are protected. In addition to the birds named in the English Order (see p. 391, above), the Scottish Order applies to the common gull, oyster-catcher, meadow pipit, redshank, pied wagtail, willow warbler and yellowhammer.

WILD BIRDS (GANNETS ON SULA SGEIR) ORDER, 1955 (S.I. No. 496): operative March 28, 1955. Outside the close season gannets may be killed or taken except on Sundays and Christmas Day on the island of Sula Sgeir.

Food and Drugs

MILK (SPECIAL DESIGNATIONS) (SPECIFIED AREAS) (SCOTLAND) ORDER, 1955 (S.I. No. 531): operative May 1, 1955. In the areas specified in the schedule to the Order special designations must be used for the purpose of all sales of milk by retail for human consumption other than catering sales.

The provisions of the Order are enforceable by the local authority. For penalties for contravention see section 9 of the Milk and Dairies (Amendment) Act, 1922.

See TRANSFER OF FUNCTIONS (MINISTRY OF FOOD) ORDER, p. 391, above.

Police

POLICE PENSIONS (SCOTLAND) REGULATIONS (S.I. No. 485); (No. 2) (S.I. No. 486): both operative April 25, 1955. Provisions similar to those contained in the English Regulations (see p. 392, above), are made for Scotland.

Letters to the Editor

Tenure of Colonial Judges

Sir,

In the April issue of the *Criminal Law Review*, at pp. 234–5, Mr. Oliver Shaw writes: "The doctrine of the separation of power, which is a fundamental article of the constitution in Britain, does not apply to colonial magistrates at all, who hold office at the pleasure of the Crown. Indeed, a recent High Court decision in England emphasised the fact that this principle applies equally to colonial High Court judges."

I should like to draw your attention to the position of the High Court judges in Malta, to the nature of their tenure and to their independence, so as to dispel any erroneous impression which the above statement might convey.

In *Terrell* v. *Secretary of State for the Colonies* [1953] 2 Q.B. 482, the recent High Court decision to which Mr. Shaw refers, the question raised was as to the nature of the tenure of a puisne judge of the Supreme Court of Malaya. Lord Goddard C.J. held that the provisions of section 3 of the Act of Settlement, 1700, which relates to the tenure of office of judges of the Supreme Court of England, did not apply to any colony and that the conditions under which judges of a colonial court held office depended upon the terms on which the Crown or Parliament established them. Under the Malta (Constitution) Letters Patent, 1947, which provide for the constitution of responsible government in Malta, no judge of the superior courts can be removed from office except on the ground of proved misbehaviour or incapacity.

With regard to the separation of powers in Malta, it is interesting to note that in an address delivered to the judges and "other legal authorities" assembled at the Palace of Valletta on January 2, 1815, the first Governor of Malta, Sir Thomas Maitland, declared: "The great principle upon which it is the intention of His Majesty that the government of these islands should be conducted is that there should be a complete separation between the executive, the legislative and the judicial authorities—that each should be independent of the other—and that while, on the one hand, the judicial authority should be restrained, in the closest manner, from interfering with the legislative or the executive, so, on the other, the executive authority should be prevented from any undue interference with the judicial proceedings."

Yours faithfully,

WILLIAM HARDING,
One of Her Majesty's Judges in Malta.

Sliema, Malta, G.C.

Notifying a Magistrates' Court's Decision to Quarter Sessions

Sir,

With reference to this practice note on page 243 of the *Criminal Law Review*, may I draw attention to section 31 (1) (ix) of the Summary

Jurisdiction Act, 1879, as amended by section 1 of the Summary Jurisdiction (Appeals) Act, 1933, which is still unrepealed and provides that the clerk of the peace shall endorse a memorandum of the decision of quarter sessions on the justices' conviction or order. It therefore seems that a formal conviction or order must still be supplied to quarter sessions, but this can no doubt also constitute the "statement of the decision" required by the Magistrates' Courts' Rules, 1952.

Yours faithfully,

GEORGE NORTON,
Clerk of the Peace.

Nottinghamshire.

Disappearance of a Right of Appeal

Sir,

I would suggest that Mr. A. E. Jones's conclusion in your current number ([1955] Crim.L.R. 306) that a right of appeal under section 19 of the Summary Jurisdiction Act, 1879, has disappeared, is of academic interest only.

That section gave a right of appeal against imprisonment imposed under a "past" or "future" Act for failure to do or abstain from doing certain things. It therefore never applied to imprisonment ordered under, *e.g.*, section 34, the provisions of which are now found in section 54 of the Magistrates' Courts Act, 1952.

As was pointed out in the memorandum that accompanied the Bill, the right of appeal related to Orders made under two Acts only—section 91 of the Explosive Substances Act, 1875, and section 6 of the Employers and Workmen Act, 1875, both of which are for practical purposes obsolete.

The repeal of section 19 was not *per incuriam,* but quite deliberate.

Yours faithfully,

A. J. CHISLETT,
Clerk to the Justices.

Croydon.

Books and Periodicals

Reviews:

The Police Officer's Assistant. Seventh edition. By Frank L. Bunn, O.B.E., Barrister-at-Law. vii and 349 and (table of legal terms) 13 and (index) 25 pp. (12s. 6d.)

It does seem strange that with the police forces of this country being long established the number of textbooks written exclusively for the use of the police service as a whole is surprisingly small. The late Col. Sir Howard Vincent, the Director of Criminal Investigations in 1881, produced the Police Code which could be said to be the forerunner of the present-day textbooks, and *The Police Officer's Assistant* seems to have been planned on similar lines. Mr. Bunn, who recently retired from the Chief Constableship of a pottery city, has blended his academic knowledge with practical experience in preparing this book for the aid of officers in their daily work. Following the foreword, which summarises a constable's duties and responsibilities, are offences dealt with in alphabetical order separated by many incidents and duties of police which are rarely governed by regulations but by local instructions which may vary from force to force yet are fundamentally based on experience and common-sense. A feature of the book is the idea of including suggested action notes beneath the description of certain offences which would give confidence even to the youngest recruit and ensure that the preliminary inquiries and actions, often open to adverse criticism, are commenced on the right foot. It is a pity these notes petered out.

With a book of this nature the author, when condensing tomes of Acts and regulations into a mere précis of about 400 pages, has found difficulty in deciding what to include or omit, and it is in this direction that a few suggestions are offered. The prolonged chapter on Shop Acts might well have been reduced to the very minimum to permit the inclusion of more important subjects. The Larceny Acts offences and ancillary crimes could have been enlarged upon and placed in one chapter instead of being spaced throughout the book, thus reducing the amount of cross referencing. Other matters which are questioned are the powers of arrest, especially for any indictable misdemeanour as mentioned on page 16, the inference that there can be a police charge of aggravated assault on page 19 and the suggestion that all liquor licensing restrictions apply to the holder of an occasional licence as they apply to any holder of a justices' licence on page 158. These are just a few minor faults which can be easily qualified by the addition of a word or two. A good book which could be improved by careful editing.

T. J. H.

The Spirit of Liberty. Papers and Addresses of Judge Learned Hand. London: Hamish Hamilton, Ltd. 1954. xxx and 285 pp. (no index). (21s. net.)

Seduction of the Innocent. By Fredric Wertham, M.D. London: Museum Press, Ltd. 1955. x and 397 pp. (no index). (21s. net.)

These two books come from the United States of America and exemplify the best and the worst of "The American Way of Life" that is exported.

The Spirit of Liberty is a collection of some of the writings and speeches of Judge Learned Hand, a man who for many years has held high judicial office in the U.S.A. and who is to be classed with such men as Oliver Wendell Holmes and Benjamin Cardozo. The themes running through this book are regard for tolerance and the liberty of the individual, and respect for the common law. Restating as he does many of the beliefs inspired by the common law, Judge Learned Hand deserves to be read by lawyer and layman alike.

Had there been any doubt about the need for preventing the import into this country of "horror comics" *Seduction of the Innocent* should soon remove them. In this book Dr. Wertham describes his investigation into the effect of these "comic" magazines in America; his account of their contents is assisted by sixteen pages of illustrations from these papers. With only one point would I disagree with Dr. Wertham; I doubt whether advertisements for air guns and sheath knives are by themselves a contributory cause of juvenile delinquency though I would agree with him that when associated with the stories printed in these papers they may well be. This book is an important contribution to the study of juvenile delinquency and will be of value to all who are concerned with children's reading matter. One wonders whether horror comics have had any connection with the increase in juvenile delinquency in New York recently reported in the newspapers.

P. A.

Banning's Military Law. Twenty-fifth edition. By Major P. G. Clark. Aldershot: Gale & Polden, Ltd. 1954. xxi and 311 pp. (no index). (15s. net.)

The study of military law is to the serving officer of greater importance than ever before. An officer is required to study it for promotion examinations and for the Staff College entrance examination. At almost every stage of his career he will have to administer it or be concerned in its administration. There are few officers who will not at some time or another be detailed to act as prosecuting or defending officer at courts-martial. With increasing seniority they will be required to sit as serving members on courts when they must be prepared to arrive at decisions as to the guilt or innocence of the accused and as to the appropriate punishment to be awarded. These are functions which are normally exercised only by trained lawyers with many years of specialised experience, and it is therefore understandable that the average serving officer regards court-martial duties as something of an ordeal.

Banning's Military Law fulfils a long-standing need in this respect. It is a model of clarity and precision, its arrangement is excellent, and there is no branch of military law that is not fully and adequately dealt with. On reading it I found of particular interest the chapters dealing with the proceedings before trial, the description, composition and jurisdiction of courts-martial, and the procedure to be followed at trials. It is a truism that the best lawyer is one who knows where to find his law. With this book in his possession there is hardly a problem in the sphere of military law that a serving officer could not solve by turning to the appropriate chapter dealing with the subject-matter of the problem. All the law—and much more—that he requires to know is contained within the 311 pages of this book.

KENNETH MYNETT.

Break Down the Walls. By J. Bartlow Martin. London: Victor Gollancz. Ltd. 1955. 273 and (bibliography) 5 and (index) 8 pp. (15s. net.)

Prison as a rehabilitative measure is ineffective; no improvement of conditions can make it humane as the deprivation of liberty is so destructive of human personality and mental health. It does not deter the criminal. . . . "What then shall we do? Let us face it; Prisons should be abolished." So argues the author of this book, an intelligent and articulate crime reporter. And when he describes the monstrously large prisons housing 6,000 inmates; a heterogeneous community of the vicious and the weak, unclassified, many of whom are serving sentences up to 199 years, or indeterminate sentences reviewed periodically by a parole board, it is no wonder that he advocates such a drastic measure. When prisons are staffed by brutal or ill-trained guards, run by senior officials appointed for political reward and liable to dismissal upon a change of state governor; where the prisoners intimidate and victimise one another, forming their own private empires complete with arsenals of iron bars, guns and knives, the word reformation sounds Gilbertian. Prison at its best is a crude, often inefficient sanction. In this book there are to be found the shades of Shaw and others, whose contempt for the penal systems of the West was never concealed. But what other methods has society to protect itself from the habitual criminal? The author suggests several. Curiously, however, he fails to discuss adequately the power of the threat of a prison sentence as a general or specific deterrent. Undoubtedly many persons curtail or refrain from criminal behaviour through a fear of incarceration, and whilst the threat of a prison sentence may not always deter the recidivist it certainly deters others. In England, for instance, between 80 and 90 per cent. of those serving a prison sentence for the first time will never return to prison. This compares very sharply with the author's figures for the United States. Despite the publishers' "commentary" on the cover (an irritating habit) most of this book is not "every bit as relevant to this country." The facts will not support such a comparison. For example, the average American prison houses between 2–3,000 inmates. The largest English prison holds about 1,200 whilst some American prisons hold 6–7,000! In such a maelstrom the prisoner loses his identity and it is difficult, if not impossible, for him to make a personal sympathetic adjustment to a member of the prison staff: a therapeutic event which has considerable psychological importance.

The first part of this book contains an exciting account of the fierce and cruel prison riot at Jackson, Michigan, in 1952. This riot was only one of an unconnected series which occurred during that year in several state prisons in the United States, indicating radical defects in the prison systems concerned; what the author calls "a general sickness" afflicting U.S. prisons. Parts 2 and 3 are a general consideration of penal history and an examination of the efficacy of present-day penal methods. Many readers will disagree with some of the author's conclusions and recommendations. Yet this book never bores; its purpose is to provoke and stimulate thought on the subject of penology. This it does admirably. Last month this reviewer complained that crime reporters often lacked objectivity and science. Here is the sort of book which makes reviewers eat humble pie.

REX B. COWAN.

Books Received:

Lost Girls. By Caroline Brown. London: Victor Gollancz, Ltd. 1955. 176 pp. (no index). (12s. 6d. net.)

By Courtesy of the Criminal. By C. A. Joyce. London: George G. Harrap & Co., Ltd. 1955. 142 pp. (no index). (8s. 6d. net.)

Evidence for the Crown. Experiences of a Pathologist's Secretary. By Molly Lefebure. London: William Heinemann, Ltd. 1955. 235 pp. (no index). (15s. net.)

Homosexuality and the Western Christian Tradition. By Derrick Sherwin Bailey. London: Longmans, Green & Co., Ltd. 1955. xii and 176 and (index) 5 pp. (15s. net.)

The Police and Crime Detection To-day. Second Edition. By Reginald Morrish. London: Geoffrey Cumberledge, Oxford University Press. 1955. 162 and (index) 3 pp. (12s. 6d. net.)

Cloak Without Dagger. By Sir Percy Sillitoe, K.B.E. London: Cassell & Co., Ltd. 1955. xvii and 200 and (index) 6 pp. (15s. net.)

Crime Without Punishment. By Anthony Heckstall-Smith. London: Allan Wingate (Publishers), Ltd. 1955. 274 pp. (12s. 6d. net.)

Rogers' Questions and Answers on Criminal Law. Fifth edition. By Peter Allsop, M.A., Barrister-at-Law. London: Sweet & Maxwell, Ltd. 1955. vi and 165 pp. (no index). (6s. 6d. net.)

Articles:

British Journal of Delinquency, Vol. 5.

Treatment of mentally abnormal offenders in Sweden, p. 262.
The role of low intelligence in delinquency, p. 281.

Journal of Criminal Law, Criminology and Police Science, Vol. 45.

Crime and punishment, p. 520.
A thoughtful code of substantive law, p. 524.
Sentencing function of the judge, p. 531.
After sentence—what? p. 537.
Statute compelling submission to a chemical test for intoxication, p. 541.

International Criminal Police Review, April, 1955.

Euthanasia, p. 98.
Bullet recovery, p. 109.

Probation, Vol. 7.

Approved probation hostels for boys—the warden and the liaison probation officer, p. 87.

Law Journal, Vol. 105.

" Permitting " by a corporate employer, p. 215.
Accommodation agencies, p. 229.
Literature and the law, p. 244.
The proposed international criminal court, p. 261.

Justice of the Peace, Vol. 119.

Speed limits, p. 246.
Section 7 of the Bankers' Books Evidence Act, 1879, p. 280.

Police Review, Vol. 63.

Evidence of character, p. 238.
Incapable of crime, p. 260.
Lines of communication (wire tapping by police), p. 274.
Larceny—fraudulent conversion (continued), p. 296.

Police Chronicle.

Prisoners in custody on one charge, questioned with reference to fresh charge, April 8, 1955, p. 2.
Those rules (the judges' rules), April 15, 1955, p. 3.

THE
CRIMINAL LAW REVIEW

Editors

JOHN BURKE and PETER ALLSOP, M.A.

Barristers-at-Law

Editorial

American letter

We include in this issue our first "Letter from the United States" by Dean Alison Reppy, the Dean of the New York Law School, and Albert P. Blaustein, Professor of Law at the New York Law School. One of the functions of the *Criminal Law Review* is to furnish a picture of the working of the common law throughout the world, and it is most interesting to see it in operation in America.

As elsewhere, juvenile delinquency is causing immense concern in the United States, and a Senate subcommittee has now begun an investigation of the problem under the chairmanship of Senator Kefauver.

Another matter causing concern in New York is the number of complaints of brutal treatment by the police as a result of which the Police Commissioner of New York has introduced changes in departmental procedure to make it easier for citizens who allege that policemen have treated them brutally or have otherwise abused their powers to obtain redress. The new procedure will also protect the police from unwarranted complaints.

Justices and their clerks

At the annual meeting of the Justices' Clerks' Society at Richmond, Surrey, on June 16, Judge Tudor Rees (who is due to retire from the chairmanship of the Surrey Quarter Sessions on July 18) is reported to have said: "If you are to discuss matters of fact I should not be here this morning under the corrupting influences of justices' clerks. We have been told on pontifical authority that magistrates must not discuss questions of fact with their learned clerks.[1] I am anxious to know what statutory, constitutional or traditional right justifies a pronouncement of that sort. I can promise you this, that I shall most certainly examine the matter in more detail. I have always taken the advice of my clerks and I shall continue to follow that course, whatever may happen to me" (*The Times*, June 17, p. 4).

The Clarke Hall Fellowship

The fifteenth Clarke Hall lecture, which was delivered on May 19, took the form of a discussion between Mr. C. A. Joyce, Headmaster of the Cotswold School, and Mr. J. L. Longland, M.A., Director of Education for Derbyshire, on the subject of "Education and Delinquency," and was charmingly introduced by Judge John Maude, Q.C. The exceptionally large attendance was well rewarded, for the discussion proved most interesting.

Mr. Joyce put forward what he considered to be some of the reasons for delinquency, the quality of teachers, standard of discipline, and the lack of standards of adults all came in for his criticism. Mr. Longland answered some of the points made but appeared to confine himself to the standards of the best schools.

Chief Constables' reports

How to recruit sufficient able officers is still the major problem of most police forces. Dundee reports that the strength of its force is above the authorised figure by two, but the only three places which report good recruiting are Eastbourne, Hastings and Rochdale. Most reports show good progress in housing and welfare conditions, and the lack of recruits is generally blamed on the low pay and long hours, as compared with civilian jobs.

In most districts there was less crime in 1954, but the proportion committed by juveniles was greater, particularly in the north. A surprising sudden increase in offences against the Wireless Telegraphy Acts occurred. Many forces claim a greater number of crimes solved. More use is being made of propaganda to prevent crime, and a number of forces have staged exhibitions and issued pamphlets for this purpose.

Road traffic is becoming of increasingly grave concern to the police. Lack of parking space is a problem in many areas. Several reports suggest that more use should be made of police patrols on the roads as it is believed this would improve driving.

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[1] See [1954] Crim.L.R. 44. See also *Ex p. How* [1954] Crim.L.R. 140.

Scottish reports

The Criminal Statistics for Scotland, 1954 (Cmd. 9441), show an increase of 3,782 in the total number of crimes and offences made known to the police in 1954 over those made known in 1953. The number of crimes against the person with violence fell, but the number of those without violence rose; the decrease in crimes against property which began in 1952 continued and is mainly to be accounted for by a fall in the amount of theft. The highest incidence of crime among males was in the 17–20 age group, a reversion to the position of 1949–51; in 1952 and 1953 the highest incidence was in the 21–24 age group.

During 1954, 11,743 men and 1,208 women were admitted to prison, fewer than were admitted in 1953. The Report on Prisons in Scotland for 1954 (Cmd. 9448), states that there has been a steady decline in recent years in the number of youths aged between 17 and 21 sentenced to imprisonment, the total in 1954 being 553 as compared with 831 in 1949. As to the work of prisoners, full employment was maintained throughout the year and a wider variety of orders was received from Government Departments; a number of prisoners from Edinburgh, Perth and Peterhead worked on outside farms. At the beginning of December, 1954, fifteen long-term first offender prisoners were transferred to the small "open" prison at Penninghame; the premises are not yet ready for full occupation and the prisoners are being employed on adaptations to the buildings and in the market garden. Throughout 1954 steady progress was made in overtaking arrears in the work of maintaining prison buildings and in improving accommodation. Prison and inmate labour was used as far as possible.

Parliament

The Queen opened the new Parliament on June 9. It is proposed that the first session shall continue until autumn next year. Certain measures, including those relating to the amendment of the Road Traffic Acts, air pollution and the setting up of new criminal courts at Liverpool and Manchester, which failed to become law in the previous Parliament are being reintroduced.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Review. They should be sent to the EDITOR, *Criminal Law Review,* 3 CHANCERY LANE, LONDON, W.C.2. *Every effort will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Stealing a Hut

By J. C. SMITH, *Barrister-at-Law*

". . . Bearing in mind that if there is a doubt as to the construction, we ought to prefer the construction which is against the imposition of a penalty, I think that it is a straining of language to say that a goldfish is an article." The well-established and valuable principle thus applied so conscientiously by the Divisional Court in *Daly* v. *Cannon* [1954] Crim.L.R. 218, seems to have been strangely absent from their Lordships' minds three months earlier in *Billing* v. *Pill* [1954] 1 Q.B. 70; [1954] Crim.L.R. 58.

The accused in the latter case was appealing from his conviction for stealing an Army hut, the property of the War Office. The hut in question comprised seven sections, without doors or windows, and rested on a concrete foundation, the floor of the hut being secured to the concrete base by bolts let into the concrete. The appellant argued that the hut was incapable of being stolen under the proviso to subsection (3) of section 1 of the Larceny Act, 1916. That subsection reads: "Everything which has value and is the property of any person, and if adhering to the realty then after severance therefrom, shall be capable of being stolen:

> "Provided that—
>
> (*a*) save as hereinafter expressly provided with respect to fixtures, growing things, and ore from mines, anything attached to or forming part of the realty shall not be capable of being stolen by the person who severs the same from the realty, unless after severance he has abandoned possession thereof; . . ."

Paragraph (*b*) of the proviso concerns creatures wild by nature, and is not relevant to this note.

It was agreed that there had been no abandonment after severance in this case, so the only question was whether the hut was a thing "attached to or forming part of the realty."

Lord Goddard C.J.—with whose judgment Sellers and Havers JJ. agreed—emphasised that the Act was not intended to alter the common law, relying on dicta to that effect in the Court of Criminal Appeal by Avory J., the draftsman of the Act. With this basic premise in mind, the Lord Chief Justice expressed the opinion that "the proviso is intended to preserve the old common law position that one cannot be charged with stealing real property," and held that the words "anything attached to or forming part of the realty" might be read as meaning "attached so as to form part" ([1954] 1 Q.B. 74). The question then was whether the hut formed part of the realty, and this depended on whether it was a fixture. Since it was presumably erected for the merely temporary purpose of accommodating Army personnel who were manning a gun emplacement during the war, and since it could be removed without doing any damage to the freehold, it was not a fixture and was, therefore, larcenable.

The *locus classicus* on the construction of a codifying statute is the judgment of Lord Herschell in *Bank of England* v. *Vagliano Brothers* [1891] A.C. 107 at 144: "I think the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view."

The Lord Chief Justice has himself recognised this principle in connection with the Larceny Act. In *Rose* v. *Matt* [1951] 1 K.B. 810, 813, he said: "The old cases may be of assistance in the construction of the Act, but if the words of the Act are clear they govern the decision which this court must now give."

With great respect to the court in *Billing* v. *Pill*, it seems that they did in this case exactly what Lord Herschell and Lord Goddard in *Rose* v. *Matt* say should not be done. If the words of the Larceny Act in question in this case are examined in their natural meaning, without reference to the previous state of the law, it would seem that they exclude from the scope of the law of larceny two types of property: first, property attached to the realty; and, second, property forming part of the realty. The word "or" is, as Lord Simonds has said, "a particle, of which the primary function is to co-ordinate two or more words between which there is an alternative. . . . Its primary and ordinary meaning is the same, whether or not the first alternative is preceded by the word 'either'" (*Chichester Diocesan Fund, etc.* v. *Simpson* [1944] A.C. 341, 368). In the construction of wills the courts have frequently found themselves unable to give a conjunctive meaning to the word "or," even where the result of not so doing has been the entire failure of the trusts intended by the testator. They give the word a conjunctive meaning only where the context in which the word is used is such as to displace its primary, disjunctive, meaning (*Re Bennett* [1920] 1 Ch. 305).

Is there anything in the context of the disputed phrase in the Larceny Act which might have such an effect? The substantive part of section 1 (3) implies that things " adhering to the realty " are not, unless they are first severed, capable of being stolen. But it does not seem that the phrase " adhering to the realty " in any way limits the words which follow in the proviso. On the contrary, the phrase is apt to include things attached to the realty which do not form part of it. The substantive part of the section then gives no support to a narrow construction of the disputed words. Nor does the relevant paragraph of the proviso itself seem to support the construction of the Divisional Court. That construction would confine the meaning of the disputed words to the land itself and fixtures. But since the proviso expressly uses the word " fixtures," and then goes on to use different words, it must be presumed that those later words mean something other than fixtures. It cannot, surely, be supposed that two different expressions were used within the same sentence to mean the same thing. It is, moreover, clearly implied in the proviso that growing things are things " attached to or forming part " of the land and thus excluded from the law of larceny " save as hereinafter expressly provided," yet it is well known that growing things do not always constitute part of the realty. Thus, a sale of *fructus industriales* was always a sale of goods at common law: *Marshall* v. *Green* (1875) 1 C.P.D. 35. Such crops are not part of the realty—but they are, while growing, attached to it.

It is submitted that the hut in this case, whether or not it was a fixture, was, most certainly, a thing " attached to " the realty, and if that construction had been applied to the Act, which, it has been contended above, is the natural one, then the accused would necessarily have been acquitted. Even if recourse is had to the common law in force before the Act, it is by no means clear that only things which are actually *part of* the realty ought to be excluded from the law of larceny. Thus, *fructus industriales,* as indicated above, were never regarded as part of the realty, yet they were not larcenable at common law. A much more slender connection with the realty than actually being a part of it, was sufficient to take a chattel outside the scope of common law larceny; it was enough that the thing " savoured of the realty," so that even title deeds to realty, and the box in which they were kept, were held to be incapable of being stolen.

There is no doubt that the appellant in this case was a dishonest man; he informed the police (apparently untruthfully) that he had bought the hut from a contractor who was demolishing huts on an adjoining site; and there seems no essential reason why the fraudulent removal of a hut should not be a crime as much as the taking of any other chattel. However, the question for the Divisional Court was not whether the appellant's act *ought to be* a crime, but whether it *was* a crime under the statute construed in accordance with well-established principles. It is submitted with respect, that there was at least a doubt whether this was so, and that the court ought, therefore, in accordance with the principle enunciated in *Daly* v. *Cannon,* to have preferred the construction which was against the imposition of a penalty.

Aspects of Forensic Science

By WILSON R. HARRISON, M.SC., PH.D.

Director of the South Wales and Monmouthshire Forensic Science Laboratory

Forgery by Typewriter

As outlined in the article on "Typewriting" in the *Criminal Law Review* for August, 1954, it is usually possible, by a comparison of the letter alignment defects and associated phenomena to determine whether or not two or more documents were typed on the same machine. With the aid of suitable standard documents for comparison, it is consequently possible to prove the identity of the machine on which a document was typed.

Such comparisons and identifications are rendered possible because, although typewriters are mass-produced articles assembled from components made largely on automatic machines, perfect alignment of the type of the new machine cannot be achieved. Use, and misuse in particular, have marked effects on the work of a machine so that eventually the alignment errors and other imperfections become so obvious that a machine has to receive skilled attention if it is to continue in service.

There can be no occasion for wonder at the claim made by document examiners that no two machines can produce identical typescript, when it is realised that the typescript produced at any given time in the life of the machine is the product of mechanism consisting of over 2,000 parts with many interlocking adjustments.

It is well known that handwriting can be forged: forgery is probably as old as handwriting. On occasion small quantities of handwriting have been so cleverly forged as to defy detection. As it is manifestly possible to accomplish the imitation of a handwriting, the question has often been asked—can the parallel operation be carried out with typescript? In other words, is it possible to prepare and adjust a typewriter so that it can be made to produce typescript which cannot be distinguished from that produced by another specified machine?

In view of the skill possessed by many of those who spend their lives adjusting typewriters to extremely close tolerances, is it not possible to adjust a suitably chosen machine, not for satisfactory operation in the usual manner, but to imitate the imperfections of a machine offered for copying, to such a close degree that an experienced examiner of questioned documents would be likely to be deceived?

This question cannot be passed over or answered in the negative without due consideration of what is involved, because if it were proved possible to accomplish such a feat it might cast doubt on every conviction based on evidence of origin of typescript and upset the theory underlying the identification of typewritten documents. This is a disturbing thought, and anything which may throw some light on this matter should be welcomed as well as being subjected to the closest scrutiny.

This question of the possibility of forging a typescript has little in common with the forging of handwriting. In any advanced community, practically all the adults are capable of writing, so that the fundamental skill—that of holding a pen and the ability to form letters—is possessed by the greater part of the population.

The only apparatus and material needed by the forger consists of pen, ink and paper, and if this is backed by an observant eye and a certain degree of manual dexterity, all the conditions are present for tolerably successful forgery. As this is the case, the field from which a forger may be drawn is so great that there can be no wonder that occasionally quite outstanding examples of successful forgeries are encountered.

Where a typewriter is concerned, the case is quite different. The degree of skill and training which is essential before anyone can make even the slightest adjustment of such a complicated piece of machinery as a typewriter is such that the field of possible forgers is limited to but a few in every million of even a highly industrialised population. This is not all; even if the necessary high degree of skill and experience were available, a number of other severely limiting conditions will apply. The nature of these will become apparent when the matter is considered in greater detail below.

The question as to whether or not a typescript can be forged has often been debated by document examiners, but it is uncertain whether it will ever be capable of a definite answer. It is very simple to suggest that practical tests be made, but it is certain that the great trouble and expense involved would hardly be justified by the results.

Supposing a skilled typewriter mechanic were given the specific task of producing a machine which would imitate the work done on a specified typewriter, what would that be likely to prove? In the first place, if his efforts failed to deceive an experienced document examiner, then it might be argued that a more skilled man possessed of greater patience and willing to spend more time on the problem might have succeeded in eliminating those residual differences which betrayed the forgery. If he succeeded in puzzling the document examiner he consulted there is no guarantee that some other more observant document examiner might not be able to detect some significant differences. Again, any appearances of success would apply only to the one machine—it could not be assumed that every typewriter could be duplicated in the same manner.

The Alger Hiss Case

Although from the foregoing it appears that no final answer can ever be obtained, a great deal of practical assistance may be gained from certain events brought to mind by the recent release from prison, at the end of his sentence, of Alger Hiss. The case of Hiss excited a great deal of interest on both sides of the Atlantic, and his two trials, and the events which led up to them, have been more than adequately dealt with in a number of publications written from different points of view—among them " Seeds of Treason " by Toledano and Lasky and " The Strange Case of Alger Hiss " by Lord Jowitt.

The facts are, briefly, that in January, 1950, Alger Hiss, a former high official in the State Department, Washington, U.S.A., was found guilty of perjury and was sentenced to five years' imprisonment.

It was contended that he had lied to a Federal Grand Jury by denying that he had passed secret Government documents to Whittaker Chambers, an admitted former Communist who accused Hiss of belonging to a Communist " Cell " in Washington in the middle and late thirties. Whilst the first trial ended with a divided jury, eight to four for conviction, at the second he was found guilty.

Hiss was convicted almost wholly on circumstantial evidence in that the most deadly testimony he had to face was that presented by a document examiner from the Federal Bureau of Investigation, who demonstrated to the court by means of enlarged photographs that a Woodstock typewriter, on which Mrs. Hiss had admittedly typed three private letters, was the machine used for typing copies of forty-seven of the secret documents.

At the two trials the defence made no serious challenge of the conclusion that the same machine had been used for typing both the letters from Mrs. Hiss and the copies of the secret documents, but vainly endeavoured to show that it was not in Hiss's possession at the material time. On the day he was sentenced Hiss said: " I want only to add that in the future, the full facts of how Whittaker Chambers was able to carry out forgery by typewriter will be disclosed."

On April 17, 1950, three months after Hiss had been sentenced, his defence attorney, Mr. Chester Lane, visited a typewriter repairer named Martin Tytell, the President of the Tytell Typewriter Co. of New York City. This company does not manufacture typewriters but specialises in repair and conversion work.

According to Tytell's account, he was shown a couple of papers said to have been typed on the Woodstock machine previously owned by Hiss, and was asked whether he felt he could build a typewriter which was capable of turning out work indistinguishable from that shown to him. Tytell replied that he thought that, given time, he could accomplish this feat.

Thereupon, defence attorney Chester Lane executed a written agreement with Tytell that 2,500 dollars would be paid to him initially, with another 5,000 on completion of the project. The condition laid down was that Tytell would have to work from typewritten samples only, without access to, or inspection of, the machine on which the samples had been typed.

This condition imposed serious restrictions on Tytell, but was thought necessary, since there was no evidence that either Whittaker Chambers or anyone associated with him could have had anything other than typescript on which to work if they had duplicated the typescript of the Hiss Woodstock machine so as to manufacture the incriminating typewritten documents produced at the trial.

Tytell went to work, and nearly two years later he declared that he had succeeded in his task. He then wrote an account of his work entitled " The Seven Thousand Five Hundred Dollar Typewriter I Built for Alger Hiss." This has been published in a number of places, including the American magazine *True—The Man's Magazine*.

Making a replica

In his account Tytell claims to have reconstructed a Woodstock typewriter built about August, 1929, bearing a serial number 231195, which he maintains now produces pica typescript which cannot be distinguished from that supposed to have been produced by the alleged Hiss typewriter, which is a more or less contemporary Woodstock machine of serial number 230009. All the individual characteristics of the alleged Hiss machine are claimed to be reproduced on the rebuilt model.

Whether Tytell's claims can be substantiated may still be open to doubt, but his account of the work entailed can leave no doubt as to the difficulties of the task he undertook. In the first place, in order to obtain a machine for his reconstruction, he found it necessary to trace and examine some thousands of old Woodstock machines before he found one which he thought suitable. His connection with the typewriter repair business and the fact that he lived and worked in an area which probably contains more typewriters than any other place in the world undoubtedly facilitated a search which, under other circumstances, might have proved unavailing.

Once a suitable machine had been located, the search for suitable type now began in earnest. Over 2,000 specimens were examined but only twenty-five were found to match those of the Hiss machine. It was only after locating a dealer who, to quote Tytell's own words, "had an abandoned mine of Woodstock typewriters," was he able to obtain the type faces still needed.

Tytell's next step was to engage a skilled engraver to modify the type faces he had collected so that they approximated to those of the machine he was copying. When the engraver discovered the purpose to which his skill was being applied, he refused to give any further assistance and, eventually, Tytell had to learn how to do this delicate work himself.

He went to extreme lengths in order to do a perfect job, and his selection of the roller is an excellent illustration of the care he thought essential to employ so as to deceive the experts. Many rollers were tested until he found one of the requisite degree of hardness, and the selected roller was specially ground to the correct diameter before being substituted for that in the machine he was working on.

Once the type faces had been prepared and mounted in the machine there followed a long and laborious series of mechanical adjustments made in an effort to reproduce the imperfections in the action of the Hiss typewriter.

The most noticeable of these imperfections was a gradual "creep" which caused the typescript to crowd on the right-hand side of the sheet. A similar effect was achieved in the rebuilt machine by a delicate adjustment of the escapement which is sometimes termed "the heart of the typewriter." It is the escapement which controls the lateral movement of the carriage from right to left.

The extreme difficulty of effecting these adjustments may be gauged when it is realised that, according to the manuals on typewriter adjustment, 128 abnormal effects are produced on a typewriter from thirteen disorders in the mechanism.

When the rebuilt machine was nearing completion Tytell felt the need of the co-operation of an experienced examiner of documents, whose duty it would be to examine specimens of the work produced by the machine after each delicate adjustment and to indicate where and how they fell short of perfection.

No assistance was forthcoming from any of the better-known document examiners who, when approached, refused to have anything to do with such a questionable project, but eventually Tytell was able to get some assistance in this direction.

Apparently expert examination indicated that certain flaws still required correction, and the work was held up until another stock of suitable type was located in Newark, N.J.

By January, 1952, Tytell had completed his assignment to his own satisfaction and executed an affidavit to that effect. According to report, two expert document examiners expressed themselves unable to distinguish between the typescript derived from the Hiss Woodstock typewriter and that from the machine rebuilt by Tytell.

Tytell justified his peculiar task with the words "If anything I am undertaking a purely scientific experiment. Any knowledge we can gain from it would help, not hinder, justice. If there is anything we don't know about questioned typewritten documents now is as good a time as any to find out."

American opinion is hostile to Tytell and his work, and since his efforts have apparently not been tested by any document examiner of undoubted standing, it is hard to say how far he has succeeded. One thing, however, has been made quite certain, and is likely to prove of extreme value whenever the question of forgery of a typewriter is discussed.

Whilst no one is ever likely to be able to decide the general question as to whether forgery of any or every typewriter is possible, there can be no doubt from the account of Tytell's experiences, even allowing for some exaggeration of the difficulties he encountered, that if ever a successful forgery is accomplished, it will (a) demand a degree of skill and perseverance on the part of the forger which is possessed by few individuals in any community; (b) be time-consuming in the search for appropriate basic material with which to make a start, to say nothing of the time taken in the fine engraving of the type faces and the subsequent adjustment of the rebuilt machine; (c) demand the co-operation of one skilled in the examination of questioned documents so that the work of the forger can be tested and guided in the final stages of the adjustment; (d) be extremely costly, because such skills as are necessary command high fees even in legitimate enterprises.

It may safely be concluded from this, that whilst forgery of a typescript may be possible, it is certainly not practicable under any but the most abnormal circumstances. No compunction need be felt about convictions obtained in the past through evidence on the identification of typescript, and in the future such evidence may be relied upon to assist the cause of justice in the same way as any other circumstantial evidence.

Evidence of Other Offences

As a general rule of evidence in criminal cases, nothing may be given in evidence which does not directly tend to prove or disprove the matter in issue. This rule, however, is not inflexible, and one of the exceptions to it is that evidence may be adduced in certain circumstances of other crimes committed by the defendant, or of other criminal acts which do not in themselves constitute the offence with which he is then charged. The basis of the admissibility of such evidence is not that the other criminal acts tend to prove that the defendant is of a bad disposition and, therefore, more likely to commit the crime in question, but that they tend to prove the commission of the particular criminal act with which he is charged.

Admissibility

It was held in *Makin* v. *Attorney-General for New South Wales* [1894] A.C. 57, that " it is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried."

However, Lord Herschell said in that case: "The mere fact that evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears up on the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental."

The decision in that case was approved more recently by the House of Lords in *Harris* v. *Director of Public Prosecutions* [1952] A.C. 694, where it was held that the prosecution could adduce evidence of similar facts to prove *mens rea,* or intent as well as to rebut a possible defence of accident.

In general, therefore, it appears that evidence of criminal acts other than those strictly constituting the alleged offence with which a defendant is charged, is admissible if it is relevant to the issue in that it tends to establish system, design, or *mens rea*, or to rebut a defence of accident. It is admissible if "there is some specific feature distinct from a mere tendency to prove bad disposition which connects the evidence with the crime charged."

In cases where it is sought to adduce evidence of other criminal acts it is within the absolute discretion of the trial judge to exclude such evidence, even though it is strictly admissible, if he considers that the prejudice it would create against the defence is out of all proportion to its value purely as evidence.

A recent case

In a case recently tried at the County of London Sessions the defendant was charged on indictment with attempting to steal a spotlight from the front bumper of an unattended motor-car. From the depositions it appeared that a prosecution witness—a police constable—had given evidence in the magistrates' court that he had seen the defendant crouched in front of the car in question. Before that had occurred, however, he had followed the defendant for some distance and had seen him tamper with the door-handles of three other unattended motor-cars. When he went up to the defendant prior to arresting him he said, "I have seen you tamper with three other cars and appear to tamper with this one"—indicating the car with which the indictment was concerned.

This latter evidence seemed to relate to the Vagrancy Act offence of a suspected person loitering with intent to commit a felony, rather than to the offence of attempted larceny with which the defendant was charged. Counsel for the defence intimated that he intended to object to the evidence relating to the three other cars being given, and the jury were taken out of court.

Counsel for the defence then submitted that the evidence should not be put in on the grounds that it was irrelevant, prejudicial and embarrassing to the defence, and might well mislead the jury. He argued that, after hearing such evidence, the jury might be misled into taking the view that if the defendant had tried the door-handles of other cars he must have been trying to steal the spotlamp. Such things as the crouch and apparent tampering with the car in question were clearly part of the *res gestae*, but what had occurred in relation to the other cars was not. Such evidence could not in any view be said to tend directly to the proof of the particular offence with which the defendant was charged. It was not essential to the prosecution case as there was ample evidence of the allegation without the evidence objected to.

In reply, the prosecution submitted that evidence of the acts in relation to the three other cars was admissible in the judge's discretion as it tended to show a system of tampering with motor-cars, and to establish *mens rea*. It also operated to negative a possible defence, in that the defendant when arrested had said that he was only beside the car in question for the purpose of urinating. The previous acts were unequivocably referable to the act which formed the basis of the present charge.

The learned deputy chairman held that the evidence of the previous acts was admissible, firstly, because the defendant, in answer to the police constable, had raised the defence that he was by the car in question only for the purpose of urinating, and the evidence in dispute tended to rebut that assertion, and secondly, because he thought the evidence was relevant in that it tended to show system and design.

J. C.

Mr. Sutterthwick's Court

By A. E. Jones
Magistrates' Clerk

Begging

Mure, the assistant gaoler, obviously did not like handling the individual he was bringing from the prisoners' assembly room. He released his hold on the ragged sleeve at the dock and stood back as far as he decently could to announce " Charge Number 4, Leonard Wilding, your worship." The prisoner shambled up the two steps and took up a position facing the public at the rear of the court, with his back to the magistrate. A titter arose as the scandalised Mure hastily turned the prisoner round. Mr. Sutterthwick looked at him intently; Wilding stared lackadaisically ahead of him and the magistrate found it impossible to decide whether he had just witnessed impudence or aberration.

" You are charged with begging in the street. Do you plead guilty or not guilty ? " said Frell.

The defendant slowly turned his eyes on the clerk and replied defiantly " If you call singing begging I was begging all right, though I've never begged in my life."

" I'll enter that as a plea of not guilty," said the magistrate, and his nose wrinkled involuntarily at what a stray current of air in the court room had wafted his way. Frell, sitting nearer the dock, had already appreciated the reason for Mure's attitude towards the prisoner.

The constable's evidence

The constable in the witness box had taken the oath unasked and now proceeded to tell his story. In consequence of a complaint made to him at 4.30 p.m. he had gone to the High Street and seen the defendant standing in the gutter, holding out his cap to passers by. He appeared to shout something after those who gave nothing, but a gentleman and two ladies put what appeared to be coins in the cap.

" And you swore on the Holy Bible," interrupted the prisoner bitterly. " Why don't you say I murdered a gentleman and two ladies ? "

" I then went up behind the accused," went on the officer unperturbed, " and heard him say to a gentleman who was approaching 'Can you spare an old man a copper, sir, for my kip tonight ? ' "

"Oh," exclaimed the prisoner, "and you're not struck dead where you stand."

"Don't interrupt," said Frell. "You'll have your turn all in good time."

"But he's swearing my life away. I'm not going to stand for that."

The constable took up the thread again. "When I arrested the defendant he said, 'You made me jump. I wasn't begging. I was singing, only my throat got dry. I have to do something for a living, don't I?' When searched at the Police Station he had on him 3s. 6d. in small silver, 4s. 10½d. bronze and one razor blade. When formally charged he made no reply."

"Oh yes, I did," broke in Wilding excitedly, "I said a lot only you never took it down because it showed you up."

"Do you want to ask the officer any questions?" inquired the magistrate.

"No. What's the use? He'll only tell lies," said the prisoner disgustedly.

The constable had no witness.

"Do you want to give evidence yourself—tell your story on oath?" the clerk asked the defendant.

"No. I don't believe in it after hearing him. But I swear on my children's lives I never asked nobody for nothing. I don't need to beg. I can earn money. Looking after cars. And singing. I know all the old songs. The sort that people like. That's what I was doing when the copper grabbed me."

"I'm not allowed to ask you questions as you're not giving evidence on oath," said the magistrate, "But would you care to tell me the names of the songs you were singing?"

"Oh, I know them all," was the reply, "All the old ones. I can't think of their names now. But people like to hear me sing."

Mr. Sutterthwick felt that he had investigated sufficiently the possibility that Wilding had been coaxing money from the pockets of his fellow citizens by artistic merit. "Anything more you want to say?" he asked.

"No, that's all," returned the prisoner and went to descend the dock steps. But Mure barred the way.

"We haven't finished yet," remarked Mr. Sutterthwick.

"Have you any witness you want to call?" asked Frell.

"Yes, plenty of people know I sing very nicely, though I am an old man."

"Have you any witness here?" persisted the clerk.

"Oh, no. They wouldn't come to a place like this."

At this point Sergeant Quing, the warrant officer, went to a toothy, red-faced man at the back of the court and spoke to him severely about laughter in the wrong place.

Anything known?

"I find the charge proved," said the magistrate. "What is known about him?"

Inspector Campting rose in his seat with a thick dossier in his hand. "He has thirty-four previous convictions for begging, your worship," he began.

"All lies," interposed the prisoner.

"His last sentence was six weeks' imprisonment. He was only released from that four weeks ago. He hasn't done any regular work for the past twenty years."

"Has he any children?"

"Not that I know of, your worship. He's never told the police he was married."

"I want to be tried by a jury," broke in the defendant.

"I'm afraid you can't be," said Mr. Sutterthwick. "You're charged with what we call a summary offence and you haven't the right to claim to be tried by a jury on it."

"Didn't I have a medical report on him before?" he went on, turning to Mure.

"Yes, your worship. That was some months ago now, your worship."

"I'd like to see it please."

It was fetched from the file and Mr. Sutterthwick studied it. The prison doctor had found Leonard Wilding dirty and verminous, fairly well nourished, but suffering from a double hernia. In the doctor's opinion he showed signs of mental deterioration consistent with early senile degeneration, but at the time of the examination he was not certifiable under the Lunacy or the Mental Deficiency Acts.

"Is there anything to be done with him?" asked the magistrate, addressing Thorburton, the probation officer.

Thorburton came into the witness box and said, "I've known this man a number of years, sir, and we've helped him on many occasions. He's been found jobs in the past but he won't keep them. He's had money from the Poor Box, too, but I'm afraid there's nothing constructive in that way of dealing with him."

"Why didn't you stick to the work the probation officer found for you?" said Mr. Sutterthwick to the prisoner.

"It didn't suit me. I'd rather find my own jobs."

"I'm afraid that now he's really unemployable, sir," interposed Thorburton.

"What about going into the Institution, Wilding?" the magistrate asked. "They're quite nice places nowadays, you know."

"No. I'm not going into any Institution. There ain't no freedom there. You can send me to prison if you like. That's not so bad nowadays."

"If I sentence you to imprisonment the public keeps you out of the taxes it pays. On the other hand, if I let you go the public keeps you out of what you get from it by begging. And, of course, if you did go into the Institution, the public would still be keeping you. I suppose it would be the cheapest way to let you go—if you didn't persist in making a nuisance of yourself. I really don't know what to do with you."

"I don't mind looking after cars. I can do that," said the prisoner helpfully.

"As I can't think what's best to do in this case, I propose to let another court decide."

An incorrigible rogue

Mr. Sutterthwick looked towards Inspector Campting and added, "I suppose the police aren't ready today to prove the previous convictions for committal as an incorrigible rogue?"

"No, your worship; I'm afraid not."

"Who's an incorrigible rogue?" demanded the prisoner.

"I shall remand you for seven days, Wilding, and next week I'll consider sending you to Sessions for sentence there. You can say anything else you want to when I see you again," said Mr. Sutterthwick. To Frell he added quietly, "I'll have a medical report on him, just in case he's certifiable by now."

"Then the public will keep him in yet another way, sir," murmured the clerk. Aloud he said for the benefit of Inspector Campting, "The police will have to be ready to prove one conviction as a rogue and vagabond and another as an idle and disorderly person, next week."

"Yes, sir," said the Inspector, and decided he would consult the clerk later to make sure which of the prisoner's thirty-four previous appearances should be put in evidence.

Meanwhile Mure had once again laid a reluctant hand on the prisoner's sleeve and uttered his customary, "This way, please." But Wilding was not disposed to leave the dock now, and held doggedly to its rail. "All right, you can shut me up this week, but I'll show you all up next week," he shouted, and was going on to say much more but the assistant gaoler grasped him expertly and half carried him, feebly struggling, out to Sergeant Chumbleton, the gaoler. His smell lingered on for some time in the court room. "Well, he will at least get a bath," said Mr. Sutterthwick to Frell.

Letter from the United States

New York.
March, 1955.

No sooner had the curtains closed on one of the most sensational murder trials in American history a scant three months ago than the newspapers in the United States had another field day with one of the most sensational murders in the annals of crime. And, as this is being written—and, perhaps, as this is being read—the correspondents for the leading newspapers and press services are and will be bending attentive ears at the trial of a youthful millionaire who is facing charges of compulsory prostitution.

The pomp and circumstances surrounding the trial of Dr. Samuel Sheppard, of Cleveland, the still unsolved murder of international financier Serge Rubinstein and the prostitution charges against one Minot F. Jelke have been duly recorded and duly communicated via wireless and cable to every part of the English-speaking world. This is obvious even to an American whose newspaper reading is confined to the New York press. One of our tabloids, *The Daily News* in New York, carried a special feature story on the opening of the current Jelke proceedings, making due note of the fact that representatives of Reuter's and *The Daily Mail* were among those in the press gallery.

Despite the undoubted interest of these sensational criminal trials and events—to lawyers and non-lawyers alike—they have had the unfortunate effect of obscuring some very significant legal happenings in the criminal law world. But before reference is made to these "happenings," the record should indicate one aspect of the Sheppard trial which is particularly noteworthy from the point of view of the legal historian.

Length of Jury Deliberations

A total of 102 hours elapsed before the jury in the Sheppard case returned with its "guilty" verdict—and forty-two of those hours were spent in actual deliberations. While this is by no means the longest deliberation period in the history of American criminal trials, it was far longer than the time required in other famous murder cases. The jury that heard the sensational trial of Harry K. Thaw, accused of murdering architect Stanford White in the early 1900's, deliberated twenty-five hours before acquitting the defendant. And it required twenty hours in 1949 for a New York jury to acquit Benjamin Feldman, Brooklyn druggist, of poisoning his wife. Feldman had been convicted at two previous trials but had secured reversals.

Bruno Richard Hauptman was convicted of the kidnap-slaying of Charles A. Lindbergh, Jr., after eleven hours and six minutes of deliberations; police lieutenant Charles Becker was convicted of the murder of gambler Charles Rosenthal after nine hours and thirty-seven minutes; and Ruth Snyder and Judd Gray were found guilty after deliberations of one hour and forty minutes.

The "Jelke" Cases

On December 31, 1954, the New York Court of Appeals (the highest court in that state) handed down two significant opinions arising out of the Jelke prosecution—opinions concerning the right of a public trial in criminal cases. The first of these decisions was a determination based upon Jelke's appeal from his conviction in the trial court—a conviction which had been reversed by the Appellate Division of the Supreme Court of New York, an intermediate appellate court.

The case was *People* v. *Jelke*, 308 N.Y. 56. The question at issue—in the words of the court—concerned "the power of the trial court to exclude members of the general public, including representatives of the press, from the courtroom during the trial of a criminal prosecution." The Court of Appeals ruled that the trial judge did not have that power and that the exclusion order constituted reversible error. Two judges dissented.

Shortly after the trial got under way in the lower court, the trial judge, on his own motion and over vigorous objections on the part of the defence, banned both press and public from the courtroom during the presentation of the prosecution's case. In announcing his ruling, the trial judge commented upon "the obscene and sordid details" which would be adduced during the proceedings and stated that "the sound administration of justice and . . . the interests of good morals" called for such prohibition.

One of the great heritages of English law is the right of a defendant in a criminal prosecution to have a public trial. This right is guarded as assiduously in the United States as in the other nations making up our common law world; it is specifically restated in the Sixth Amendment to the Constitution of the United States and the constitutions and statutes of every state in the union. But the right to a public trial does not preclude the power of a trial judge to maintain order and do everything possible to preserve good morals within his courtroom. On numerous occasions, the number of spectators at trials has been severely curtailed in the interest of health or to prevent disorder. And courtrooms in the United States have been cleared temporarily in order to enable an immature or emotionally disturbed witness to testify.[1]

Section 4 of the New York Judiciary Law provides that the trial judge may, at his discretion, exclude from the courtroom "all persons who are not directly interested" in "all proceedings and trials in cases for divorce, seduction, abortion, rape, assault to commit rape, sodomy, bastardy or filiation." Compulsory prostitution is not included in the statutory enumeration. It is true that evidence of a sodomous act was anticipated and was actually adduced during the course of the trial but, as the court pointed out, this "did not convert that compulsory prostitution case into one for sodomy, and, in any event, could not justify exclusion of the public during other stages of the trial."

Arguing that the statute should be strictly construed, the Court of Appeals took the position that a public trial is a "fundamental privilege," and that publicity affords "greater security to the individual in the administration of justice." Further, the court declared that publicity "serves as a safeguard against unjust persecution of an accused" and plays "an important role in assuring 'testimonial trustworthiness.'"

However, while the absence of publicity was held to have deprived Jelke of his right to a public trial, the court felt that the action taken in excluding the press did not deprive the newspapers "of any right or privilege of which they may complain." The issue in the companion case of *Matter of United Press Assns.* v. *Valente*, 308 N.Y. 71, was succinctly put by the court: "Whether members of the public at large, including the press, also possessed an enforceable right of their own to insist that Jelke's trial be open to the public." Also the answer was "no." The court held that the right to a public trial can only be asserted by the accused—the party who is directly affected by its denial. Since the defendant in a criminal prosecution may, under certain circumstances, desire to waive this right, his decision in this regard should not be subject to interference or frustration by others whose interests are secondary to his own.

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[1] Compare the following extract from Archbold's *Criminal Pleading*, 33rd ed., § 336: "At common law a trial on indictment or criminal information must be held in public court with open doors. In dealing with certain classes of criminal trials the presiding judges not infrequently request women and young persons to leave the court, and there is undoubtedly power to exclude or eject persons who disturb the proceedings." The paragraph goes on to refer to sections 36, 37 of the Children and Young Persons Act, 1933, which confer limited powers of exclusion. [Eds.]

"Fair Trial and Free Press"

Despite the importance of the case of *People* v. *Jelke* in holding that too little publicity might result in the reversal of a conviction in criminal proceedings, the American bar in recent weeks has been even more interested in the question of too much publicity in criminal trials. There is no gainsaying the fact that freedom of the press and the right to a fair trial are both "fundamental privileges." But what should the courts do when these "fundamental privileges" are in conflict?

A leading article on this subject, published last November in *The American Bar Association Journal,* opened with these words:

> "Freedom of the press has frequently been abused to become unlicensed pandering to a public desire for excitement, gossip and drama, to an extent where fair trials have become impossible in many instances. Lawyers, both for the prosecution and the defence, have used our free press in their own way to secure a 'trial by newspapers' and for self-advertisement, all in complete disregard of professional propriety and ethics."

Four years ago, two criminal convictions were reversed on the general ground of "too much publicity." In July, 1949, a seventeen-year-old white girl in Florida reported that she had been raped, at the point of a pistol, by four Negroes. Two months later the accused were convicted without recommendations of mercy and sentenced to death. The Supreme Court of Florida affirmed the conviction and the case came before the United States Supreme Court on a writ of certiorari in 1951. The case is *Shepard* v. *Florida*, 341 U.S. 50.

Said the United States Supreme Court in reversing the conviction:

> ". . . prejudicial influences outside the courtroom, becoming all too typical of a highly publicised trial, were brought to bear on this jury with such force that the conclusion is inescapable that these defendants were prejudged as guilty

> and the trial was but a legal gesture to register a verdict already dictated by the press and the public opinion which it generated."

In 1951, Denis W. Delaney, Collector of Internal Revenue of the federal government for the District of Massachusetts, was convicted on charges of having "received payments with the intent to have his decision and action as Collector influenced on matters which were then pending before him, in his official capacity, in regard to the collection of income taxes." As might be expected, Delaney's prior suspension from public office and the indictment and arraignment which followed occasioned widespread comment in the press. During the course of the trial, Delaney moved for a continuance "for a reasonable time" until the prejudicial effects of the nationwide publicity wore off to permit a trial free from "hostile atmosphere and public preconception." The motion was denied and conviction followed.

A year later, the case of *Delaney* v. *United States*, 199 F. 2d 107, came before the United States Court of Appeals. The Appellate Court held that the trial judge erred in his ruling on the motion; the judgment below was vacated and the case was remanded for further proceedings.

American lawyers who have been working on the fair trial and free press question report that the problem does not exist in England. And the reason why the problem does not exist in England is because of the broad powers of the English trial judge to issue contempt citations against the press.[2] Such powers are unknown in the United States. Some members of the American Bar have recommended legislation giving similar powers to American trial judges, but it is generally agreed that this course of action would result in open warfare between the press and the Bar.

Most American practitioners feel that a solution can be found in the adoption of some code or "statement of principles" by both the Bar associations and the various associations representing the publishers and editors. The issues have been discussed again and again at forums sponsored by the Bar and in the pages of the Bar journals and newspaper trade periodicals. A proposed code has been drafted and it is hoped that the next few months will see real progress toward its adoption.

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[2] The essence of the jurisdiction to punish for contempt of court which the court exercises with regard to reports of trials in newspapers is that reports if they contain comments on cases before they are tried, or alleged histories of the prisoner who is on trial, and all misreports are matters which tend to interfere with the due course of justice. Whether the publication reacts favourably or unfavourably upon the prisoner is not the test: *R.* v. *Evening Standard Co.* [1954] 1 Q.B. 578; [1954] Crim. L.R. 465, in which case the newspaper had to pay a fine of £1,000. In *R.* v. *Bolam, ex p. Haigh* (1949) 93 S.J. 220, the editor of the *Daily Mirror* was sent to prison for three months and the newspaper was fined £10,000. Lord Goddard C.J. warned the directors that in the event of a repetition of such an offence the court might exercise its powers on them personally. [Eds.]

Public Opinion Polls and Criminal Trials

Another recent case touching upon the fair trial problem is *Irvin* v. *State*, 66 S. 2d 288. The defendant, a Negro, was charged with rape, and counsel contended that the accused could not obtain a fair trial in the Florida county in which the alleged rape was committed. In his motion for a change of venue, Irvin's attorney submitted the results of a public opinion poll—prepared by a professional poll-taking organisation—purporting to show that the sentiment in the community precluded an unbiased trial of the issues.

The Supreme Court of Florida upheld the ruling of the trial judge in refusing to admit the proffered evidence. Despite the growing important of public opinion polls in the fields of public relations and advertising, the court contended that " as it was conducted and attempted to be applied here, it was useless." To begin with, the Florida tribunal felt that there was a vast difference between any public opinion poll and a valid demonstration to the court of an overpowering sentiment that would make it impossible to find " twelve good and true." Further, since the witness who offered the results of the poll was a compiler of questionnaires rather than an interviewer, he would be testifying only as to hearsay—and any opinion he could have given would have been " hearsay based upon hearsay."

Bar Association News

The largest survey ever undertaken by the legal profession is now under way. It is the first definitive study of criminal law administration to be made on a national scale, and the calibre of its directors indicates the importance of the project. Part of the new American Bar Association research programme, the survey will be under the supervision of Major-General William J. Donovan, former director of the OSS. Chief Justice Earl Warren will serve as special consultant.

A grant of $200,000 from the Ford Foundation made possible the beginning of the project, which had been in the planning stages for more than a year.

The project will not be concerned with the causes of crime but with criminal law procedures. Research will cover studies of the functions of the police, the criminal courts, prosecution and defence of criminal actions, and probation, sentence and parole. Results of the study will be made available to the general public as well as to legal, legislative and crime prevention groups.

There is other news from the American Bar Association dealing with criminal law matters—news which will be discussed in further "Letters from the United States." At the mid-year meeting of the Association late last February, the House of Delegates (the governing body of the A.B.A.) gave its approval to a bill now pending in Congress to suppress the transmission of gambling information across state lines. The Association also authorised its Criminal Law Section to consult with representatives of the American Medical Association on the possibility of a joint study by these two professions on narcotics traffic. And, of even greater interest and importance, the House of Delegates instructed the Criminal Law Section to study and report on a recent proposal that the United States Supreme Court and the federal Courts of Appeal be empowered to review sentences imposed by inferior federal courts in criminal cases.

Another topic which will be discussed in the next "Letter from the United States" is the ever-present wire-tapping problem and its recent ramifications.

ALISON REPPY.
ALBERT P. BLAUSTEIN.

Advocacy at Petty Sessions

By B. FRASER HARRISON, *Solicitor*

(*Continued from p.* 369)

The Prosecutor

Although solicitors are frequently instructed by the police in difficult prosecutions, the majority of prosecutors who appear before the magistrates are Government officials and police officers. Most lawyers, and particularly those in private practice, are trained to have an independence of mind and an appreciation of the true role of an advocate. The police officer prosecutor is subject to a number of disadvantages. Frequently he, himself, has authorised the prosecution, even if he was not responsible for the original investigation; in addition, the officer conducting the prosecution may feel to blame if he fails to shield the officers giving evidence from criticism and errors. Because some of these prosecutors adopt unfair tactics, it is essential that those who wish to act with propriety understand the part in a trial that a prosecutor should play.[1]

The ideal prosecutor, be he qualified or not, is one who dissociates himself from the organisation causing the prosecution, and regards himself as a part of the court assisting the bench to learn sufficient of the facts to enable it to arrive at a judicial decision, whatever that decision may be.

Preparation for trial

In one respect the task of a man advising an accused is simpler than that of a prosecutor. The former is aware of the charge against his client, and his research is limited to the legal aspects of that offence; he first reads the charge and then reviews the facts. A prosecutor, however, receives a mass of facts and has to discover an appropriate offence.

The prosecutor, as an advocate, is first concerned when the statements of the potential witnesses are placed before him, perhaps together with the suggested charge or charges. Although certain charges are laid so frequently that they have become routine, it is essential to realise that this is the most important moment in the case from the prosecutor's point of view; no one can blame him if his witnesses fail to come up to expectation or "to proof," but if there never has been sufficient evidence to justify the charge at all, or if, for example, the charge should have been dangerous driving and not driving without due care and attention, the prosecutor can blame no one but himself for the magistrates' decision.

With this in mind it is well to set a procedure and always follow it, whether or not the charge has already been suggested or even laid; after all, there is still time to ask the magistrates to agree to an amendment of the charge or for the accused to have an additional charge put to him.

A simple procedure to adopt is:

(a) Read the witnesses' statements to obtain a general picture of what occurred.

(b) Thoroughly investigate the rule of common law, Act or regulation which has been infringed, ensuring (i) that no decided case has changed the original position, and

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[1] Police prosecutions have frequently been criticised. For the Scottish system see [1954] Crim.L.R. 915. [Eds.]

(ii) that no amendment to the original Act or regulation has been made, frequently a task of some difficulty which can be adequately performed only if one's books are up to date.

(c) Make a list of the matters that have to be proved by the prosecutor before the magistrates can convict, and discover in what matters and to what degree the onus of proof is transferred to the accused. This list may be drawn up from an authoritative source, from the Act, from the regulation and from the reported cases.

(d) Read through the witnesses' proofs carefully and ensure that the matters essential for a conviction are somewhere spoken of in the evidence. Although many magistrates seem to believe that the more witnesses a prosecutor calls to prove one matter, the more certainly he has proved it (taking exactly the opposite view in the accused's case), a prosecutor, without omitting a necessary witness, should not call witnesses for the sake of repetition.

If, during this review, the prosecutor learns of a witness whose evidence is opposed to that of the other witnesses upon whom he intends to rely, or finds that a witness whom he does not intend to call can speak of some aspect of the affair, he ought to inform the accused of the names and addresses of these witnesses in time for the accused to see them before the trial. A solicitor acting for the police would not be wise to give the accused the information without the police's instruction, although his advice to them should strongly favour the giving of the information.

The prosecutor in court

It is in court that a prosecutor shows his true worth. Because some magistrates commence a trial with a feeling of antipathy towards the accused, it is easy for the prosecutor to influence them still further against the accused. Anyone who has sat in a magistrates' court knows of the innumerable ways in which prejudicial information can be conveyed to the magistrates in a manner unacceptable to a qualified bench. A prosecutor who uses these tactics will certainly be successful, but he will soon acquire the undesirable reputation of being a persecutor.

A prosecutor should be aware of the occasions when he can insist upon trial by judge and jury, and of the accused's right of election. If he is in a strange court and he wishes to ask the magistrates to try an indictable offence summarily, it saves time if he finds out from the magistrates' clerk the procedure adopted at that court on such applications.

A prosecutor is entitled to make a speech before calling his evidence. If any law is involved, the magistrates ought to be given guidance, and if the case is complicated a summary of what the prosecutor's witnesses will say may be related. This does not mean the reading out of each witness's statement, but a succinct statement so that the magistrates know what is relevant. If the charge merely involves a few simple events a single sentence, such as, "This is a cross-roads collision," or, "The accused is alleged to have stolen the watch from an empty house," will suffice.

It is no part of the prosecutor's task to protect the witnesses that he calls, whether they are police officers or not. An accused is entitled to allege that he has been mishandled or that the police are telling lies, and his advocate must put those allegations to the police officer if he is calling evidence to substantiate them at the proper time. A prosecutor should not object to the allegations; if the police officer giving evidence has misbehaved his conduct ought to be investigated, and if the magistrates do not believe the accused, they may show their displeasure by the magnitude of the penalty.

A prosecutor should always remember that he is there to present the case to the court and not to "win" the case. No advocate should adopt a bullying manner towards a witness, nor should he frame his questions in such a way as deliberately to trip him, and an advocate who is prosecuting should be especially careful in this regard.

Finally, as the case closes and the accused's advocate makes his address, a prosecutor should listen carefully and should interrupt only if the advocate has misled the court as to what was said in evidence, and he may reply only to his opponent's interpretation of the law. When the interruption or reply is made it should be with great courtesy.

A prosecutor always wishes to be thought efficient, but should strive even more for a reputation for probity.

(*To be continued*)

Practice and Procedure

Magistrates' Courts

Limited driving disqualifications

Where a driving disqualification is imposed after a conviction the court sometimes desires to avail itself of the proviso to section 6 (1) of the Road Traffic Act, 1930, and limit the disqualification " to the driving of a motor-vehicle of the same class or description as the vehicle in relation to which the offence was committed." The recent case of *Petherick* v. *Buckland* [1955] Crim.L.R. 118, has shown the difficulties which may arise from the attempted application of this provision. In that case justices had limited a driving disqualification to the driving of " 5 hundredweight vehicles." The question the Divisional Court was asked to decide on a case stated was whether this was a " class or description " of vehicles within the meaning of section 6 (1). After hearing counsel for the Minister of Transport and Civil Aviation as *amicus curiae* the court found itself unable to say what a " description " of a vehicle means in the section, or who is to prescribe descriptions of vehicles. While the court was not prepared to say that the justices could not themselves lawfully make " 5 hundredweight vehicles " a " description " of vehicles, they pointed out the inconvenience of acting in this way, and they directed that in future limited disqualifications should refer to " vehicles which can be found under a particular class in the Act or under a particular description in the regulations."

This direction must undoubtedly lead to changes in the practice of many magistrates' courts when the proviso to section 6 (1) is invoked. The commonest kind of case where it is desired to limit a driving disqualification is that of the lorry driver who is convicted of an offence in relation to a private car. Often it is felt that disqualification for driving for pleasure will be a sufficient punishment, and the defendant may safely be allowed to continue driving for his living. In such circumstances the disqualification imposed is frequently expressed to be limited to " private cars." This formula, however, would not appear to comply with the direction in *Petherick* v. *Buckland*, because the term " private car " is nowhere used in the Road Traffic Act, 1930, or in the regulations made under it to indicate a particular class or description of vehicle. Could " passenger vehicles " be legitimately substituted for " private cars " ? The words " passenger vehicles," though not found in section 2 of the Act of 1930 (the main classifying section), are used in the First Schedule to the Act for the purpose of constituting a class of vehicles to which special speed limits apply. " Passenger vehicles " are there defined as " vehicles constructed solely for the carriage of passengers and their effects," but the various categories described under that heading exclude the ordinary private car because no general speed limit applies to that type of vehicle. It seems a little doubtful, therefore, whether a disqualification limited to " passenger vehicles " could properly be used where the offence in question had been committed with an ordinary private car. Such a limited disqualification would not, in any case, enable a bus or motor coach driver to continue in his employment though disbarred from private motoring.

Similar difficulties are encountered in the case of a member of the armed forces who is disqualified in connection with the driving of a civilian vehicle. It seems impossible to find any formula which uses terms employed in the Act or regulations, and which would limit the offender to driving service vehicles only, though it might be possible to impose a limited disqualification which would permit him to continue driving certain types of vehicle which are special to the Army, Navy or Air Force.[1]

In the past some courts have attempted to achieve a limited disqualification by expressing it to relate to " all vehicles except " the particular category which they are content that the defendant should continue to drive. Even if that category is covered by one of the prescribed classes or descriptions in the Act or regulations, it does not appear that a disqualification ordered in this way complies either with the terms of section 6 of the Act or with the direction given in *Petherick* v. *Buckland*.

" Classes " and " descriptions " of mechanically propelled vehicles are found in considerable numbers in section 2 of the Road Traffic Act, 1930, in the First Schedule to that Act, in the Motor Vehicles (Construction and Use) Regulations, 1951, in the Motor Vehicles (Authorisation of Special Types) Orders and in the Motor Vehicles (Driving Licences) Regulations, 1950. But few of them can be employed to secure the kinds of limited driving disqualifications which courts are likely to want to impose. Moreover, some of them are defined in such a way that a limited driving disqualification expressed with reference to them might turn out to be either more or less limited than was intended. For instance, " motor cycles " are defined in section 2 of the 1930 Act as " mechanically propelled vehicles (not being vehicles classified under this section as invalid carriages) with less than four wheels and the weight of which unladen does not exceed eight hundredweight ": this, nowadays, would cover some vehicles which have the appearance of, and are popularly regarded as, light cars.

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[1] In *Dennis* v. *Tame* [1954] Crim.L.R. 472, Lord Goddard C.J. suggested that a serviceman might be disqualified from driving a " private motor-car " and so left free to drive service vehicles.—[EDS.]

In fact, the more one examines the implications of the decision in *Petherick* v. *Buckland*, the more it appears that for practical purposes the proviso to section 6 (1) of the Road Traffic Act, 1930, will be of little value so long as the statutory system of classifying and describing motor-vehicles remains as at present. [A. E. Jones.]

Case and Comment

The reports of cases to which initials are appended hereunder have been specially prepared for *The Criminal Law Review* by the following reporters:—

J. D. Pennington, *Barrister-at-Law.*
Henry Palmer, *Barrister-at-Law.*

Accomplice—*Corrobation of evidence—sexual offences.* See R. *v.* Asplin, p. 433, below.

Certiorari—*Application for extension of time—procedure*

R. *v.* Ashford, Kent, Justices, *ex p.* Richley [1] (Q.B., Divisional Court: Lord Goddard C.J., Hilbery and Pearce JJ.: April 27, 1955) ([1955] 1 W.L.R. 562; [1955] 2 All E.R. 327n).

On December 29, 1953, an affiliation order was made against R. whereby the justices ordered him to pay 20s. a week to Miss M. for the maintenance and education of her bastard child. On February 15, 1955, R. applied *ex parte* to the Divisional Court for leave to move for an order of certiorari to quash the justices' order more than six months after the date of the order. R. did not give notice to Miss M. that he was making this application and she did not appear. The court granted leave. At the hearing of the motion the Divisional Court dismissed the motion on the facts.

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[1] For the applicant: *Frank Whitworth* (instructed by Kingsford, Dorman & Co. for Kingsford, Flower & Pain, Ashford). For the respondent: *J. H. Gower* (instructed by Lovell, Son & Pitfield for Willmott, Elwell & Taylor, Ashford).

Delivering the judgment of the court, Lord Goddard C.J. said: There is one matter on which I want to say a word of general application with regard to applications for leave to move for orders of certiorari. R.S.C., Ord. 59, r. 4 (2), provides that motions for certiorari must be made within six months of the making of the order which it is sought to quash. The court has power, of course, to extend the order, and the present case is one in which it would be right to apply for the order to be extended. But where a person intends to apply to the court for an extension of time he must give notice to the person whom he would serve in the ordinary way as one who would be affected if the order challenged were quashed, that he intends to apply for an extension because the person affected has a right to be heard and to object to such an extension. He very likely has what I will call a vested interest in the upholding of the order. [J. D. P.]

Evidence—*Buggery—corroboration—direction to jury*

R. *v.* ASPLIN [2] (Court of Criminal Appeal: Lord Goddard C.J., Hallett and Havers JJ.: May 2, 1955).

A. was convicted of two offences of buggery with boys and appealed to the Court of Criminal Appeal against the convictions on the ground of misdirection of the jury. It was contended on behalf of A. that the learned judge was wrong in directing the jury (i) that, in a case where the charge was of a sexual nature, the necessity for corroboration was less than in other cases; (ii) that, in one case, if they believed the boys it was their duty to convict; and (iii) with regard to the necessity for corroboration of the evidence of other boys not involved in the charge. Counsel for the prosecution conceded that in certain aspects the summing-up could not be supported.

Held, that, as regards corroboration the summing-up could not be supported. As regards point (i), the summing-up was inconsistent with the decision in *Davies* v. *D. P. P.* [1954] Crim.L.R. 305. As regards point (ii), the summing-up ought to have made it plain that the jury were to convict only if they believed the boys and paid attention to the warning about corroboration. There was also a slip on point (iii). The question for the court was, on the authority of *R.* v. *Haddy* [1944] K.B. 442 and *Stirland* v. *D. P. P.* [1944] A.C. 315, whether a reasonable jury after being properly directed would, on the evidence properly admissible, without doubt convict. The court was of the opinion that there was, in this case, ample corroboration and an overwhelming certainty of guilt and thought that the jury properly directed would have taken the same view. The proviso to section 4 (1) of the Criminal Appeal Act, 1907, would, therefore, be applied and the appeal would be dismissed. [H. P.]

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[2] For the appellant: *G. G. Baker Q.C., H. J. Davies* (instructed by Clifford G. White, Watford). For the Crown: *Norman A. Carr* (instructed by Director of Public Prosecutions).

COMMENTARY. In *R.* v. *Haddy*, which was approved in *Stirland* v. *D. P. P.*, it was held that there was no substantial miscarriage of justice within the meaning of the proviso to section 4 (1), despite the misdirection of the jury, where on the facts if there were a proper direction to the jury the only reasonable verdict would be one of guilty.

See Archbold, 33rd ed., 343 *et seq.*

Murder—*Evidence—sufficiency of evidence of palm print*

R. *v.* ROBINSON [3] (Court of Criminal Appeal: Lord Goddard C.J., Hallett and Havers JJ.: May 9, 1955) (*The Times*, May 10, 1955).

R. was convicted at Birmingham Assizes of murdering an old lady aged 83. The jury, who took six hours to consider their verdict, found that he was: "Guilty of murder committed unintentionally during an act of violence, namely rape." The evidence for the prosecution rested mainly on a comparison of a palm print found where the window by which the murderer entered the old lady's house was broken. That print was shown to have a number of similarities with R.'s palm print. The defence was an alibi, supported by the evidence of a pathologist who said that in his opinion the old lady's death took place at a time when R. was elsewhere. R. appealed to the Court of Criminal Appeal against his conviction.

Held, dismissing the appeal, that as it had now been established that no two human beings had the same palm prints, the jury were justified in finding that the print was that of the murderer and of the accused. The question whether the evidence left doubt in the minds of the jury was not for the court, and the court was satisfied that the summing-up was eminently fair and accurate. There was evidence upon which the jury could convict and the appeal would be dismissed. [H. P.]

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[3] For the appellant: *J. R. Bickford Smith* (instructed by Fidler & Pepper, Sutton-in-Ashfield). For the Crown: *R. C. Vaughan Q.C.*, *J. M. Griffith-Jones* (instructed by Director of Public Prosecutions).

Murder—*Responsibility—direction to the jury*

R. *v.* SALT [4] (Stafford Assizes: Devlin J.: March 9, 1955) (105 L.J. 266).

S. threw a boy, aged 6, into a canal and he was drowned. On a charge of murder it was pleaded in S.'s defence that, at the time of the act, he was suffering from "fugue"—a disease of the mind in which a person doing an act imagines that it is being done by someone else and that he, the doer, is an onlooker.

Devlin J. directed the jury that in English law there was no such thing as a verdict of diminished responsibility; the alternatives are either that of guilt or innocence, the verdict of "Guilty but insane" being a verdict of innocence or complete irresponsibility for homicide. Abnormality was a matter for consideration in deciding on the exercise of the prerogative of mercy. If a man committed a criminal act when he was sleep-walking, he would have done the act but would not be guilty of crime, because his mind would not have been with the act.

S. was found guilty of murder. [J. D. P.]

COMMENTARY. See Criminal Responsibility and Punishment: Functions of Judge and Jury [1954] Crim.L.R. 661.

Receiving—*Direction to the jury—necessity of proving felonious receipt*

R. *v.* DICKSON AND GRAY [5] (Court of Criminal Appeal: Lord Goddard C.J., Hallett and Havers JJ.: May 9, 1955).

D. and G. were convicted of receiving a television set. They appealed to the Court of Criminal Appeal on the ground of misdirection of the jury at the trial. It was contended on behalf of D. and G., *inter alia*, that the judge's direction that the jury must be satisfied that at the time D. and G. received the article they must have known it to have been stolen, was inadequate and the jury ought to have been told that the receipt must be a felonious receipt.

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[4] For the Crown: *E. Ryder Richardson Q.C.*, *G. T. Meredith* (instructed by Director of Public Prosecutions). For the accused: *G. G. Baker Q.C.*, *Max Holdsworth* (instructed by Robertson, Worthington & Brodie, Newcastle-under-Lyme).

[5] For the appellant: *S. Crowther* (instructed by George H. Jucker Esq.). For the Crown: *J. H. Buzzard* (instructed by the Solicitor, Metropolitan Police).

Held, allowing the appeals, that it is not sufficient, in directing the jury in a receiving case, to direct them that once it is proved that the goods have been stolen and that they have been received and that the accused knew they were stolen, that is an end of the matter. A receipt with felonious intention must be established and the jury must be so directed. If it were otherwise a police officer who received goods in the course of his duties knowing them to be stolen could be convicted of receiving. The case of *R.* v. *Matthews* (1950) 34 Cr.App.R. 55 was an illustration of the necessity for proving a felonious receipt. The convictions could not stand, having regard to the nature of the summing-up, and the appeals would be allowed. [H. P.]

COMMENTARY. In *R.* v. *Matthews* a person who was charged with receiving stolen property admitted that when he received the property he knew it to be stolen, but said he received it with the intention of handing it over to the police. He did communicate with them but never handed over the property. He was convicted. The Court of Criminal Appeal quashed the conviction and held that if at the time property is received the receipt is innocent, the fact that the person who has taken the property subsequently changes his mind and misappropriates it does not render the taking receiving.

See Archbold, 33rd ed., 783–786.

Road Traffic—*Driving while under the influence of drink—trying to control a runaway car*

R. *v.* KITSON [6] (Court of Criminal Appeal: Hilbery, Gorman and Havers JJ.: May 26, 1955) (*The Times,* May 27, 1955).

K. was convicted of driving while under the influence of drink. K.'s case was that the car had been driven for some time by his brother-in-law. When K. suddenly awoke from a doze, the car was moving and there was no one in the driving seat; the ignition key was not in place and the handbrake was off. The evidence of the police was that they followed the car, which was taking a most erratic course, some 300 yards down a hill, before it eventually came to rest on a grass verge. K. said he did not apply the handbrake because of the greasy surface of the road. There was abundant evidence that K.

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[6] For the appellant: *C. G. L. Du Cann* (instructed by Sidney & Co. for Jack Levi, Leeds). For the Crown: *Alastair Sharp* (instructed by the Town Clerk, Leeds).

was under the influence of drink to such an extent as to make him incapable of having proper control of the car. K. now appealed to the Court of Criminal Appeal against his conviction on the ground, *inter alia,* that there was not sufficient evidence on which he could have been found to be " driving " the car. It was contended for K., relying on *Wallace* v. *Major* [1946] K.B. 473, *Saycell* v. *Bool* [1948] 2 All E.R. 83, and *Floyd* v. *Bush* [1953] 1 W.L.R. 242, that the test to be applied was that the driver of the car had to be the man causing the car to be moved; if it was being moved independently, there was no driving.

Held, dismissing the appeal, that having regard to the facts of the case, it was quite impossible to say that K. was not driving the car. The car was subject to his control and to his direction. He had steered it on to the grass verge. [H. P.]

COMMENTARY. In *Wallace* v. *Major* it was held that a person steering a disabled motor-vehicle while it was being towed was not driving it. In *Saycell* v. *Bool* the owner of a motor-vehicle which had no petrol in its tank was held to be driving the vehicle when he released the brake and steered it downhill to a garage; setting the vehicle in motion and controlling it by steering and braking constituted driving. In *Floyd* v. *Bush* a man who took a motor-assisted pedal cycle and pedalled it away without using the engine was held to have driven it away, as he had caused it to move.

See Archbold, 33rd ed., 1019, 1024; Stone, 87th ed., 2060; Stroud's *Judicial Dictionary,* 3rd ed., vol. 1, 885.

Trial—*Counsel—alleged inaccuracies*

R. *v.* XINARIS [7] (Court of Criminal Appeal: Hilbery, Gorman and Havers JJ.: May 24, 1955) (*The Times,* May 26, 1955).

X. was convicted at the Central Criminal Court of murder. He appealed against his conviction to the Court of Criminal Appeal on a number of grounds, two of which were that counsel for the prosecution had harassed him during his cross-examination and that there was an accumulation of inaccuracies, irregularities and fallacies on the part of counsel for the prosecution in his closing speech to the jury about which the judge failed to warn the jury.

Held, dismissing the appeal, that no one who read the transcript of the evidence at the trial could come to any conclusion other than that the conduct of the trial throughout was correct, that the matter was impartially handled, and that the summing-up was full, fair and adequate on the evidence and was impeccable on the law. With regard to the allegations against counsel for the prosecution, it was quite apparent, when the passages referred to were read, that no sort of abuse had been made of the privilege and function of cross-examination, and it was to be observed that counsel for the defence, who was present in the court below, never once rose to make any objection to the alleged inaccuracies. It was the duty of counsel to object if inaccuracies were introduced, and he did no such thing. The court had no doubt that no objection was taken because the allegations were non-existent in fact. [H. P.]

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[7] For the appellant: *E. L. Mallalieu Q.C., B. J. Yahuda* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *Christmas Humphreys, Jean Southworth* (instructed by Director of Public Prosecutions).

Trial—*Misdirection of jury—appeal.* See R. *v.* ASPLIN, p. 433, above.

Trial—*Receiving—direction to jury.* See R. *v.* DICKSON AND GRAY, p. 435, above.

Acts and Orders

Agriculture

Potato Marketing Scheme (Approval) Order, 1955 (S.I. No. 690): operative May 10, 1955. The Scheme of 1933 (S.R. & O., No. 1186) is replaced with certain amendments. By regulation 83 a disciplinary committee of the Potato Marketing Board, which is to be constituted at each sitting of not more than six members of the Board nor less than four, with an independent legally qualified chairman, is given power to impose certain penalties; a registered producer who fails to give specified information, or who gives false information, or who obstructs an authorised person from entering and inspecting premises occupied by him, may be fined up to £200; a registered producer who contravenes regulations made by the Board concerning the terms on which potatoes may be sold, minimum prices, quality, description, grading, forms of contract, buyers, agents and grower-salesman, may be fined not more than £100, or a sum representing £5 per acre of his potato acreage, whichever is the greater. No penalty may be imposed for any contravention which constitutes an offence under any Act other than the Agricultural Marketing Act, 1931. Notice of the time and place of a hearing by the Board against a producer must be served personally or by registered post on the producer not later than the fourteenth day before the hearing; at the hearing the producer is entitled to appear and either to be heard in person or represented. The committee is bound by a majority decision, the chairman having a casting vote. After a decision of the committee the matter may be referred to arbitration or application may be made to have it reheard by the committee. The committee may postpone the imposition of a penalty for a period not exceeding twelve months.

For further penalties for contraventions of the scheme, see section 6 (3) of the Agricultural Marketing Act, 1931.

Agriculture (Poisonous Substances) Regulations, 1955 (S.I. No. 632): operative May 2, 1955. The Regulations of 1954 (S.I. No. 828; see [1954] Crim.L.R. 633) are revoked and replaced with certain amendments. Mazidox and an organo-phosphorus compound are added to the substances to which the regulations apply, although in the latter case protective clothing is only required to be worn when the compound is being handled in its concentrated form. A new process, soil-application, is defined, being the process whereby a substance is discharged or released in liquid form under gravity pressure directly on to or into the soil for absorption by the roots of plants; protective clothing to be worn when using this process is prescribed.

For penalties for contraventions, see section 4 of the Agriculture (Poisonous Substances) Act, 1952.

WARE POTATOES (AMENDMENT) ORDER, 1955 (S.I. No. 626): operative May 1, 1955. Restrictions on the transport of potatoes from certain eastern counties to South Wales and South-Western England imposed by the Order of 1954 (S.I. No. 986; see [1954] Crim.L.R. 725) are removed.

See CROFTERS (SCOTLAND) ACT, p. 449, below.

Armed Forces

ARMY ACT, 1955 (3 & 4 Eliz. 2, c. 18); AIR FORCE ACT, 1955 (3 & 4 Eliz. 2, c. 19): both operative on a day to be appointed. The Army Act and the Air Force Act are revised and there are a number of changes in offences under service law. These are set out in Part II of each Act. For defined acts done with intent to assist the enemy the maximum penalty is death (ss. 24, 25, 32); cowardly behaviour, offences against morale, becoming a prisoner of war through disobedience or wilful neglect, failing to rejoin forces, offences concerning sentries and looting are punishable by imprisonment (ss. 26–30). Mutiny is defined. Persons taking part in or inciting a mutiny involving the use or threat of violence, or entered into with the object of avoiding duty against the enemy, are liable to the death penalty (s. 31). Other offences of mutiny and insubordination are punishable by imprisonment (ss. 31–36). In the case of desertion the only automatic forfeiture of service is the period of absence; any additional forfeiture is at the discretion of the court-martial by which the man is tried (s. 37). Where an offence may be committed by either an officer or other rank, both are now liable to the same punishment.

Any member of the Army or Air Force who obstructs a constable arresting another such person either under a warrant or in exercise of his powers of arrest without warrant is liable to a maximum of two years' imprisonment on conviction by court-martial (s. 59). This provision is intended to remove doubts as to the powers of constables.

Section 133 concerns the powers of civil courts. Section 134 relates to finality of trials both where a person is tried by a competent civil court and where he is tried by court-martial.

Part II of each Act applies with modifications to certain civilians (s. 209).

Sections 186–190 contain provisions relating to deserters and absentees without leave and set out the powers of the police and of civil courts in regard to such persons. Sections 191–197 contain offences relating to military matters punishable by civil courts; the penalties are altered for the offences of pretending to be a deserter, procuring and assisting desertion, obstructing members of the regular forces in the execution of their duties, aiding malingering, unlawful dealings with military stores and with documents relating to pay, pensions, mobilisation, etc., and the unauthorised use of decorations.

Instead of being kept alive by an annual Army and Air Force Act, the Army Act, 1955, and the Air Force Act, 1955, will be continued in force for twelve months at a time by Orders in Council, which will require an affirmative resolution of both Houses of Parliament. New legislation to keep the Acts in force will be required at five-yearly intervals (Army Act, 1955, s. 226; Air Force Act, 1955, s. 224).

REVISION OF THE ARMY AND AIR FORCE ACTS (TRANSITIONAL PROVISIONS) ACT, 1955 (3 & 4 Eliz. 2, c. 20); operative partly on May 6, 1955, and partly on a day to be appointed. It is intended to bring the new Army and Air Force Acts into operation on January 1, 1957. The present Acts which would otherwise expire on July 31, 1955, are therefore continued in force, subject from that date to certain modifications (ss. 1, 2, Sched. I); in relation to offences against any section in Part I of the present Acts certain provisions will apply as if that section had been contained in the new Act, and that Act had been in force when the offence was committed. Certain enactments are adapted as a result of the replacement of the present Army and Air Force Acts by the Acts of 1955, among them being the Naval Discipline Act, the Regimental Debts Act, 1893, the Criminal Evidence Act, 1898, the Naval Billeting, etc., Act, 1914, the Navy (Pledging of Certificates, etc.), Act, 1914, the Army Reserve Act, 1950, the Air Force Reserve Act, 1950, the Courts-Martial (Appeals) Act, 1951, the Visiting Forces Act, 1952, and the Auxiliary Forces Act, 1953 (s. 3, Sched. 2). Sections 174, 174A of the present Acts, which relate to the licences of canteens in Northern Ireland and entertainments under service direction, are replaced by permanent provisions (s. 4, Sched. 3).

Birds

WILD BIRDS (EGGS OF COMMON GULL) ORDER, 1955 (S.I. No. 724): operative May 18, 1955. It is an offence to take the eggs of the common gull in the administrative counties of Kent and East Sussex, and in the county boroughs of Brighton, Canterbury, Eastbourne and Hastings. For penalties, see section 12 of the Pests Act, 1954 ([1954] Crim.L.R. 639).

British Commonwealth

NIGERIA (APPEALS TO PRIVY COUNCIL) ORDER IN COUNCIL, 1955 (S.I. No. 706): operative on a day to be determined. Appeals will lie from the Federal Supreme Court of Nigeria to the Privy Council at the discretion of the court if, in its opinion, the question involved in the appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to the Council for decision. The procedure on such appeals is prescribed.

See COLONIAL AIR NAVIGATION ORDER, p. 443, below; COLONIAL CIVIL AVIATION (APPLICATION OF ACT) (AMENDMENT) ORDER, p. 444, below.

Children and Young Persons

CHILDREN AND YOUNG PERSONS (HARMFUL PUBLICATIONS) ACT, 1955 (3 & 4 Eliz. 2, c. 28): operative June 6, 1955. This Act is intended to prevent harm to children and young persons caused by "horror comics." It applies to any book, magazine or other similar work which is of a kind likely to fall into the hands of children or young persons, and consists wholly or mainly of stories told in pictures, with or without the addition of written matter, portraying the commission of crimes, acts of violence or cruelty, or incidents of a repulsive or horrible nature, in such a way that the work as a whole would tend to corrupt a child or young person into whose hands it might fall (s. 1). It is an offence for anyone to print, publish, sell or let on hire any such work, or to have it in his possession for the purpose of selling it or letting it on hire, the maximum penalties being four months' imprisonment or a fine of £100 or both. On a charge of selling or letting on hire, or possessing for selling or letting on hire such a work, it is a defence for the accused to prove that he had not examined the contents, and had no reasonable cause to suspect the work was one to which the Act applies (s. 2 (1)). No prosecution in England or Wales may be commenced except by or with the consent of the Attorney-General (s. 2 (2)). Where an information is laid under this Act a justice (in Scotland, a sheriff) may issue a warrant for the search of places where there are suspected to be works to which this Act applies, or plates or photographic films prepared for the purposes of printing them; on conviction such articles may be forfeited (ss. 3, 5 (2)). The importation of any work to which the Act applies and any plate or photographic film prepared for printing such a work is prohibited (s. 4); this provision extends to Northern Ireland (s. 5 (3)).

The Act expires on December 31, 1965, unless Parliament otherwise determines.

Civil Aviation

Colonial Air Navigation Order, 1955 (S.I. No. 711): operative July 1, 1955. The Order of 1949 (S.I. No. 2000), as amended, is revoked and replaced with a number of further amendments. The principal changes are: (1) there are new requirements concerning certificates of maintenance, records of flying hours and of defects, and for the training and periodical tests of the personnel of public transport aircraft (arts. 16, 17, 18); (2) holders of licences issued by a contracting State may, subject to certain limitations, form part of the operational crews of aircraft flown in a colony other than public transport and aerial work aircraft (art. 21); (3) flight engineers' and flight navigators' licences (cadet class) are abolished; (4) the Governor of a colony may require instruments and their equipment, and the manner of their installation or stowage to be approved in writing, and that passengers be instructed in the use of equipment (art. 33); (5) no person under the age of sixteen may have sole control of a glider in motion (art. 47); (6) the Order applies to persons in and the personnel of any aircraft registered in the colony wherever they may be, and to British subjects, British protected persons and citizens of the Republic of Ireland required by the Order to do anything in relation to such aircraft, wherever they may be (art. 71); this article, however, is not to be so construed as to make any person guilty of an offence in any case where section 3 (1) of the British Nationality Act, 1948, which limits the criminal liability of certain persons who are not citizens of the United Kingdom and colonies, provides he shall not be so guilty; (7) the Order only has a limited application to military aircraft in the service of a visiting force in colonial territories to which the Visiting Forces Act, 1952, applies (arts. 51, 54, 72); (8) the rules of the air and air traffic control, visual flight rules, instrument flight rules, the additional general rules, and rules relating to lights are amended.

For penalties for contraventions, see art. 69.

COLONIAL CIVIL AVIATION (APPLICATION OF ACT) (AMENDMENT) ORDER, 1955 (S.I. No. 709): operative July 1, 1955. The term "Governor" in the Order of 1952 (S.I. No. 868), in relation to Nigeria, means the person for the time being performing the functions of the Governor-General of the Federation of Nigeria, and in relation to Zanzibar the person for the time being acting as British Resident.

Emergency Laws

EMERGENCY REGULATIONS, 1955 (S.I. No. 791): operative June 1, 1955. A state of emergency was declared on May 31, 1955, because of the railway strike, and these regulations, made under section 2 of the Emergency Powers Act, 1920, conferred powers on the Government so that they might deal with the situation more effectively. The Minister of Transport and Civil Aviation may relax a number of requirements concerning road traffic (regs. 1–7); the Postmaster-General may restrict postal and telegraphic services (reg. 8); the Minister of Fuel and Power may relax requirements concerning the supply of electricity or gas and regulate their consumption and the distribution of liquid fuel (regs. 9–11); the Minister of Agriculture, Fisheries and Food may regulate the distribution of food and animal feeding-stuffs (reg. 12); chattels may be requisitioned (reg. 13); various offences are created relating to sabotage, acts of trespassing and loitering, acts harming the forces, constables and other persons performing essential services, and inducing persons to withhold services (regs. 14–17); regulation 18 concerns the employment of police forces; any constable may arrest without a warrant any person whom he has reasonable ground for suspecting to have committed an offence against any regulation (reg. 19); regulation 20 concerns attempts to commit offences and assisting offenders; regulation 21 relates to penalties and place of trial.

COAL DISTRIBUTION (RESTRICTION) DIRECTION, 1955 (S.I. No. 596): operative May 1, 1955. The maximum amounts of coal of different classes which may be furnished or acquired for consumption in controlled premises between May 1, 1955, and April 30, 1956, are specified.

For penalties for offences, see regulation 92 of the Defence Regulations, 1939.

IRON AND STEEL SCRAP (AMENDMENT NO. 1) ORDER, 1955 (S.I. No. 678): operative May 9, 1955. The Order of 1954 (S.I. No. 1593: see [1955] Crim.L.R. 123) is amended. New delivery districts are introduced and some existing prices revised.

CONTROL OF PAPER (NEWSPAPERS) (ECONOMY) (AMENDMENT No. 2) ORDER, 1955 (S.I. No. 675): operative May 5, 1955. For a period of twenty-four weeks beginning on March 6, 1955, the number of pages which a newspaper may print is increased.

Juvenile Courts

See JUVENILE COURTS (CONSTITUTION) (SCOTLAND) (AMENDMENT) RULES, p. 451, below.

London

The following Order has been made detailing a prescribed route: S.I. 1955, No. 662 (Carshalton).

Merchant Shipping

MERCHANT SHIPPING (DEPARTMENT OF SCIENTIFIC AND INDUSTRIAL RESEARCH SHIPS) ORDER, 1955 (S.I. No. 708): operative May 16, 1955. Provision is made for the registration as British ships under section 80 of the Merchant Shipping Act, 1906, of ships in the service of the committee of the Privy Council for Scientific and Industrial Research. The application of the Merchant Shipping Act, 1894, to ships so registered is detailed.

MERCHANT SHIPPING (ADMINISTRATION IN THE NEW HEBRIDES) ORDER, 1955 (S.I. No. 707): operative June 1, 1955. In the New Hebrides the functions of a British consular officer under the Merchant Shipping Acts, 1894 to 1954, may be exercised by the British Resident Commissioner.

Northern Ireland

See REVISION OF THE ARMY AND AIR FORCE ACTS (TRANSITIONAL PROVISIONS) ACT, p. 441, above; CHILDREN AND YOUNG PERSONS (HARMFUL PUBLICATIONS) ACT, p. 442, above; OIL IN NAVIGABLE WATERS ACT, p. 447, below.

Pensions

See SPECIAL CONSTABLES (PENSIONS) ORDERS, below.

Poisons

See AGRICULTURE (POISONOUS SUBSTANCES) REGULATIONS, p. 439, above.

Police

SPECIAL CONSTABLES (PENSIONS) ORDERS, 1955 (S.I. No. 701); No. 2 (S.I. No 702): both operative May 9, 1955. The Orders of 1950, 1952–54, cease to have effect except in relation to deaths and retirements which occurred before May 9, 1955. Provisions of the Police Pensions Regulations, 1955 (S.I. No. 480; [1955] Crim. L.R. 392), applying to auxiliary policemen, apply with certain modifications to awards paid to or in respect of special constables who, as a result of injury on duty, retire or die on or after May 9, 1955.

Provision is made for larger discretionary increases in awards made to widows and children of special constables in the case of deaths before May 9, 1955, and for the adjustment of the abatement of a widow's pension by National Insurance.

See EMERGENCY REGULATIONS, p. 444, above.

Post Office

See EMERGENCY REGULATIONS, p. 444, above.

Probation

PROBATION RULES, 1955 (S.I. No. 639): operative May 1, 1955. The salary of whole-time women probation officers will be increased by stages until 1961, when it will equal that of the men officers. Fresh rules are made concerning sick leave.

Road Traffic

PUBLIC SERVICE VEHICLES (TRAVEL CONCESSIONS) ACT, 1955 (3 & 4 Eliz. 2, c. 26): operative May 6, 1955. Provision is made for allowing free travel or travel at reduced fares on public service vehicles run by local authorities. Sections 1 and 2 of the Transport Charges, etc. (Miscellaneous Provisions) Act, 1954, do not apply to fares chargeable to persons by virtue of travel concessions granted by local authorities, and conditions attached to a road service licence do not affect the operation of arrangements for granting such concessions (s. 1 (7)).

See EMERGENCY REGULATIONS, p. 444, above.

Sea and Seashore

OIL IN NAVIGABLE WATERS ACT, 1955 (3 & 4 Eliz. 2, c. 25): operative on a day to be appointed. The Act enables effect to be given to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954. Its provisions apply to all vessels, whether registered or not and of whatever nationality, unless expressed to apply only to British ships registered in the United Kingdom.

Certain areas of the sea are designated as prohibited sea areas in relation to tankers, and others in relation to other vessels (s. 2, Sched.). Within such areas it is an offence for a British ship registered in the United Kingdom to discharge crude oil, fuel oil, lubricating oil or heavy diesel oil, as defined by regulations, or to discharge any mixture containing such oil with the consequence that the oil in the mixture fouls the surface of the sea (s. 1 (1)). If it is proved that there were not less than one hundred parts of oil in a million parts of mixture, it is conclusively presumed that the oil in the mixture fouled the surface of the sea; and if it is proved that there were less than one hundred parts of oil in a million parts of the mixture it is conclusively presumed it did not (s. 1 (4)). It is an offence if any oil or mixture containing oil is discharged into the sea within the seaward limits of the territorial waters of the United Kingdom or any other waters, including inland waters, which are within those limits and are navigable by seagoing ships, from any vessel, any place on land or any apparatus used for transferring oil from or to any vessel (s. 3 (1), (2), (4)). A harbour authority, however, may appoint a place within their jurisdiction where the ballast water of vessels in which a cargo of petroleum spirit has been carried may be discharged into the harbour waters (s. 3 (3)).

Section 4 sets out a number of special defences to charges under sections 1 and 3.

Regulations

In order to prevent or reduce discharges of oil and mixtures containing oil, the Minister of Transport and Civil Aviation may make regulations concerning the equipment of British ships registered in the United Kingdom and their compliance with certain requirements. The owner or master of a ship contravening such regulations will be guilty of an offence (s. 5). The penalty for any offence under section 1, 3 or 5 is on conviction on indictment or summary conviction a fine; the maximum fine on summary conviction is £1,000 (s. 6).

The Minister may by regulation require records to be kept of matters relating to oil by masters of British ships registered in the United Kingdom; he may also require the keeping of records relating to the transfer of oil to and from vessels while within United Kingdom territorial waters. Any person failing to comply with such regulations may on summary conviction be fined not more than £500; any person knowingly making a false or misleading entry in such records is liable on summary conviction to a fine not exceeding £500, or imprisonment for not more than six months or both. Provision is made concerning the use of the records as evidence (s. 7).

Harbours

Harbour authorities may provide facilities to enable vessels to discharge or deposit oil residues. The Minister may, in certain circumstances, direct a harbour authority to provide specified oil reception facilities, and any authority failing to comply with such directions is liable on summary conviction to a maximum fine of £10 for each day during which the default continues from the day after the end of the period specified in the directions, or such extended period as is allowed by the Minister (s. 8).

No oil may be transferred to or from any vessel in any harbour in the United Kingdom between sunset and sunrise unless prescribed notice has been given. If oil is so transferred the master of the vessel or the occupier of a place on land from which or to which oil is transferred is liable on summary conviction to a maximum fine of £100 (s. 9). If any oil or mixture containing oil is discharged into the waters of a harbour in the United Kingdom in order to secure the safety of the vessel or to prevent damage to her or her cargo, or to save life, or escapes into such waters because of damage to the vessel or a leak, or escapes from a place on land, the owner or master of the ship or the occupier of the place on land must report this at once to the harbour master; if he fails to do so he is liable on summary conviction to a maximum fine of £200 (s. 10).

Powers of inspection

The Minister has power to appoint inspectors to ensure compliance with the Act, and every surveyor of ships is deemed to be so appointed. Section 729 of the Merchant Shipping Act, 1894, which relates to the powers of inspectors, applies with modifications to such inspectors. In the case of vessels for the time being in a harbour in the United Kingdom the harbour master and any other person appointed by the Minister have powers of inspection; they may require the production of records or copy such records and require the person by whom they are kept to certify the copy as a true copy; the maximum penalty for failing to comply with these requirements is a fine of £10. Anyone wilfully obstructing a person exercising powers under this section is liable on summary conviction to a maximum fine of £100 (s. 11).

Miscellaneous

Section 12 concerns proceedings for offences under the Act. Proceedings in England and Wales in respect of certain offences may only be brought by or with the consent of the Attorney-General or by a harbour authority; others may only be brought by or with the consent of the Attorney-General or by the Minister or by an authorised person.

Section 13 concerns the enforcement and application of fines. Section 14 contains general provisions as to the application of the Act. The Minister may exempt vessels from any provisions of the Act or regulations (s. 15). The Act does not apply to ships of H.M. Navy or to Government ships in the service of the Admiralty while employed for purposes of the Navy (s. 16).

Section 22 is the interpretation section. The Act applies with modifications to Northern Ireland (ss. 23, 25).

The Oil in Navigable Waters Act, 1922, is repealed and replaced, but section 3, which relates to the keeping of records of transfers of oil, remains in force until regulations made under section 7 (2) come into operation (s. 24).

Scotland

Children and Young Persons

See CHILDREN AND YOUNG PERSONS (HARMFUL PUBLICATIONS) ACT, p. 442, above.

Crofters

CROFTERS (SCOTLAND) ACT, 1955 (3 & 4 Eliz. 2, c. 21): operative on a day to be appointed. Provision is made for a Crofters Commission to be set up to reorganise crofting in Scotland. The Commission may serve a notice on the owner or occupier of any holding, requiring him to furnish information with regard to the acreage, rent and tenure of the holding and other matters. Any person who fails to give the required information within three months after the service of the notice, or who knowingly or recklessly gives false information will be liable on summary conviction to a fine not exceeding £10 (s. 15 (1), (5)).

Where the landlord of a croft receives from the crofter a notice of renunciation of his tenancy, or obtains an order for the crofter's removal from the Land Court, or where for any other reason the croft becomes vacant, the landlord must give notice of this to the Commission within one month ; where any croft is at the commencement of the Act vacant, or the subject of a notice of renunciation or of an order of the Land Court which has not taken effect, the notice must be given within three months after the commencement of the Act. For failure to comply with these requirements the landlord will be liable on summary conviction to a fine not exceeding £10. A croft will be taken to be vacant at the commencement of the Act if it is occupied otherwise than by a crofter and the consent of the Secretary of State to such occupation has not been obtained. No notice to the Commission will be required where the Commission declares a croft to be vacant (s. 16 (1), (2), (10)–(12)).

Crofters who share in a common grazing are given power to appoint a grazings committee from among their number. If they fail to do so, the Commission may appoint one or may appoint a grazings constable to execute the functions of such a committee. It will be the duty of the committee or constable to make and administer regulations for the management and use of the common grazings, and any person contravening such regulations will be liable on summary conviction to a fine not exceeding forty shillings ; if he continues the offence after a notice of warning has been served on him by the grazings committee or the Commission, he will be liable to a further fine not exceeding five shillings for each day on which the offence is continued (ss. 24–27). Crofters interested in a common grazing have power to appoint not more than two of their number, and to authorise in writing one person bona fide employed by them for reward to kill and take ground game on the common grazing with firearms or otherwise (s. 27 (5)).

Persons authorised by the Secretary of State or the Commission may enter and inspect any land at all reasonable times to determine whether any powers under the Act should be exercised ; they may be required to produce evidence of their authority to do so, and may not demand entry as of right unless prescribed notice has been given to the occupier. The maximum penalty for obstructing an authorised person is £5 for a first offence and £20 in the case of any subsequent offence (s. 30).

Juvenile courts

JUVENILE COURTS (CONSTITUTION) (SCOTLAND) (AMENDMENT) RULES, 1955 (S.I. No. 691): operative September 1, 1955. Except in certain specified circumstances a juvenile court must be so constituted as to include both a man and a woman. Provision is made for the appointment of additional members to the juvenile court panels when necessary.

Police

SPECIAL CONSTABLES (PENSIONS) (SCOTLAND) ORDERS, 1955 (S.I. No. 703); No. 2 (S.I. No. 704): both operative May 9, 1955. Provisions similar to those contained in the English Orders (see p. 446, above) are made for Scotland.

Rivers

RIVER PURIFICATION AUTHORITY (COMMENCEMENT No. 7) ORDER, 1955 (S.I. No. 653): operative May 16, 1955. The Forth River Purification Board began to exercise its functions as a river purification authority under the Rivers (Prevention of Pollution) (Scotland) Act, 1951, on May 16, and the provisions contained in Part III of the Act came into force for the area on the same date.

Letters to the Editor

Attempt

Sir,

With reference to the remarks on "Attempt" at pages 293–295 of your May issue, it may, perhaps, interest your readers to know that in the Maltese Criminal Code there is the following section with regard to attempted offences:

Section 42.—(1) Whosoever with intent to commit a crime shall have manifested such intent by overt acts which are followed by a commencement of the execution of the crime, shall, save as otherwise provided, be liable on conviction—

(*a*) if the crime was not completed in consequence of some accidental cause independent of the will of the offender, to the punishment established for the completed crime with a decrease of one or two degrees;

(*b*) if the crime was not completed in consequence of the voluntary determination of the offender not to complete the crime, to the punishment established for the acts committed, if such acts constitute a crime according to law.

(2) An attempt to commit a contravention is not liable to punishment, except in cases expressly provided for by law.

This section was modelled on the Continental Codes, and more particularly on the Code of the Kingdom of the Two Sicilies (sections 69 and 70), and was drafted by Maltese jurists in 1854 in Italian, which was the language of the law in Malta up to 1934. The present English text is a rendering of the original and is now the authentic text contained in the Revised Edition. The definition seems clear enough, although, of course, difficulties in border-line cases, especially with regard to the distinction between "preparatory" and "executive" acts, do arise in practice.

Textbooks, particularly that of Carrara, have fixed certain criteria for distinguishing between the two kinds of acts, such as, that the act is merely "preparatory," and therefore insufficient to constitute an attempt, if it is "equivocal," *i.e.*, capable of being intended for either a good or a criminal purpose. Old writers give the classical example of the purchase of poisonous substances, which, alone, is a mere *preparatory* act—it being possible that the purchaser only intended to exterminate rats—but becomes "executive" if the poison is poured into the glass of the intended victim, who, for one reason or another, independent of the offender's will, fails to drink it.

Sub-para. (*b*) above might have helped the accused in the case of Page, mentioned at page 294, *supra*.

The mention of "crimes" and "contraventions" in the section aforequoted is in conformity with the distinction contained in Maltese law, much the same as the distinction between crimes and misdemeanours in English law.

Yours sincerely,

William Harding,
One of Her Majesty's Judges in Malta.

Sliema, Malta, G.C.

Dangerous and Careless Driving

Sir,

Mr. Arthur Exton, in his letter in the May issue of the *Criminal Law Review*, at p. 330, writes that, if the prosecution take out only one summons for dangerous driving without an alternative one for careless driving, the defendant can elect for trial at quarter sessions, and on the dismissal of this summons he could not be brought before the court again for careless driving, although he might well be guilty of such an offence. I rather gather that Mr. Exton merely means to criticise the suggestion that only one summons, under section 11, need be issued because of the magistrates' power to allow a charge under section 12 to be preferred, pursuant to the Road Traffic Act, 1934, s. 35. I do not think that he means that an acquittal by a jury under section 11 bars proceedings for careless driving. If it does, then presumably it would bar them whether the summons under section 12 was issued before or after the acquittal. The cases on "autrefois acquit" are involved and somewhat contradictory and little help can be derived from them. I would submit, however, that the enactment of section 35 of the Act of 1934 in itself shows that in Parliament's view a dismissal of a charge under section 11 does not bar proceedings under section 12.

It may sometimes happen that, because of injuries, a charge under section 11 is not tried summarily until six months have elapsed since the offence; it would seem doubtful if the magistrates could then direct a charge under section 12 to be preferred, pursuant to section 35, in view of the effluxion of time. Mr. Exton has pointed out the advantages of preferring a charge under section 12 along with one under section 11 and Mr. Hails the disadvantages. The difficulties and procedural pitfalls outlined by your two learned correspondents reinforce, I submit, the arguments advanced by me at [1954] Crim.L.R. 647 for the repeal of sections 11 and 12 and their replacement by the single offence of negligent driving.

Yours faithfully,

" CLERK TO BOROUGH JUSTICES."

Disappearance of a Right of Appeal

Sir,

Mr. Chislett is, of course, perfectly correct when he says, with regard to my note under the above heading, that the right of appeal given by section 19 of the Summary Jurisdiction Act, 1879, was limited to imprisonment imposed in pursuance of any past or future Act, and therefore did not cover sentences under the 1879 Act itself. But this does not dispose of the point I made that the complete repeal of section 19 has removed a right of appeal which could formerly have been invoked in a case where imprisonment had been ordered for disobedience to an order relating to the custody of a child. The power to deal with such disobedience in this way derives from section 7 (5) of the Guardianship of Infants Act, 1925, which enacted that a provision with regard to custody might be enforced under section 34 (2) of the Summary Jurisdiction Act, 1879, subject to certain preliminary procedure. Imprisonment ordered in such circumstances is therefore imposed " in pursuance of " a " future Act," from the point of view of the 1879 statute. True, it is imposed also in pursuance of section 34 (2) of the latter, but as it follows from the operation of the 1925 Act, that Act cannot be left out of account in stating the powers in pursuance of which the court is acting.

There is no High Court decision in the matter and no Home Office memorandum claims to be conclusive on a point of law. Mr. Chislett's letter rather strengthens my feeling that the repeal of section 19 of the 1879 Act was *per incuriam,* which does not mean that it was not deliberate, but that it was done, to quote the words of your Glossary " without proper consideration of all relevant matters."

Yours faithfully,

A. E. JONES,

Magistrates' Clerk.

London.

Books and Periodicals

Reviews :

Crime Detection. Modern Methods of Criminal Investigation. By A. Svensson and O. Wendel. London: Cleaver-Hume Press, Ltd. 1955. xvi and 350 and (bibliography) 6 and (index) 20 pp. (38s. 6d. net.)

This is an edition for English readers by two Swedish authors, and deals with crime investigation. Primarily intended for police officers, it will also be of value to those members of the legal profession whose work relates to crime investigation. Although such investigations are mainly scientific in character, it is not intended to be a scientific textbook in the academic sense but is presented in such a way as to be easily understood by laymen.

A useful editorial introduction deals with the rules of evidence. The opening chapter deals with the protection and procedure at the scene, followed by chapters dealing with the search, preservation and ultimate examination of clues by modern scientific methods. Such clues include personal clues such as fingerprints and footprints, blood, semen, vomit, stomach contents, hairs, etc., and miscellaneous clues such as dust, dirt and debris, including textiles, buttons, string, matches, paper, printing and writing on paper and burnt paper.

Motor-vehicle incidents are dealt with briefly and could with advantage be extended.

Chapter VII deals with weapons and explosives; cutting, stabbing and striking weapons are rather too briefly disposed of, but firearms, bullets, cartridge cases and explosives receive quite comprehensive treatment.

Causes of death, including deaths by violence, poisoning, suicide and accident are illustrated by a mass of detail drawn from actual cases. The final chapter deals with problems of identification.

A valuable feature of the book is the list of references at the end of each chapter, together with a bibliography at the end; a second feature is the illustrations which are excellent, and the publishers are to be congratulated on the production.

The book is an important contribution to crime detection and stresses the important part which science can play in such investigations.

J. B. FIRTH.

Cloak Without Dagger. By Sir Percy Sillitoe, K.B.E. London: Cassell & Co., Ltd. 1955. xvii and 200 and (index) 6 pp. (15s. net.)

Evidence for the Crown. Experiences of a Pathologist's Secretary. By Molly Lefebure. London: William Heinemann, Ltd. 1955. 235 pp. (no index). (15s. net.)

Sir Percy Sillitoe has spent a life-time in the service of law and order, beginning as a police trooper in South Rhodesia and ending as Director-General of M.I.5. Miss Lefebure's experience was confined to five years' employment as secretary to the Home Office pathologist. Sir Percy's reminiscences cover every aspect of police work as seen by an alert and hard-working Chief Constable. Miss Lefebure chatters about corpses. Sir Percy's book is everything that one might reasonably expect—modest, sincere and informative. Miss Lefebure's is, against all expectation, enormously entertaining.

Sir Percy Sillitoe entered the police force in this country when in 1922 he was, to his own surprise, selected as Chief Constable of Chesterfield. His personal qualities fortified by a tough apprenticeship in Africa fitted him for the post, but it is a sobering thought that under modern conditions he would probably not be considered eligible. After a brief rural interlude in the East Riding (where he scandalised the gentry and delighted his force by supporting a village constable in a dispute with a local magnate) he moved on first to Sheffield and then to Glasgow. His achievements in these two disorderly, gang-ridden cities deserve to become, and no doubt will become, legendary; and the chapters in which he recounts them are of greater interest than anything else in the volume. They are followed by a short account of Kent in wartime (enlivened by a characteristic encounter with the squire of Chartwell) and a necessarily circumspect summary of his seven years at the head of M.I.5. In the last chapter he retires, only to shoulder the immense task of suppressing the illicit diamond trade in Africa. As he apologetically observes, his autobiography is incomplete. " It is, I know, unsatisfactory to the reader . . ." Also, one may suspect, to the diamond smugglers.

To compose a lucid and readable account of a distinguished career is not an altogether easy task. The dreary reminiscences of prominent persons have proved the point again and again. But it is no disrespect to Sir Percy to say that Miss Lefebure's achievement is more remarkable. In 1941, a reporter doing duty in the coroners' courts, she was unexpectedly offered the post of secretary to Dr. Keith Simpson. Thereafter her business lay with post-mortem examinations, her regular ports of call were public mortuaries, her outside excursions to the dismal scenes of violent and unexplained death. From her macabre experiences she has succeeded in composing a book that is at once vivid, humorous and humane. Keeping a very observant eye firmly fixed on her outrageous subject-matter, she contrives somehow to avoid the gulfs of flippancy and sentimentality that yawned for her on either hand. Moreover, without any pretence to literary airs and graces, she displays more than once an enviable gift for exact descriptive writing. And we leave her, on her last page, retired into the turmoil of marriage and motherhood, nostalgically reflecting " how nice and *quiet* the corpses were."

CYRIL HARE.

By Courtesy of the Criminal. By C. A. Joyce. London: George G. Harrap & Co., Ltd. 1955. 142 pp. (no index). (8s. 6d. net.)

Lost Girls. By Caroline Brown. London: Victor Gollancz, Ltd. 1955. 176 pp. (no index). (12s. 6d. net.)

These books deal with various aspects of our system of reclamation of young delinquents and criminals. Both point the way to possible improvements and reforms.

A visit to the Cotswold Approved School at Ashton Keynes ten years ago was, for me, an unforgettable experience. In reading this sincere and palatable account of a life-time's experience in Borstal and Approved School work by its headmaster, one recaptures the inspiration, enthusiasm and humanity which is to be found there. One might occasionally disagree with the author's conclusions, but it is impossible to deny the weight of his arguments. Mr. Joyce, from a wealth of knowledge, emphasises the paramount importance of the personal relationship between those in authority and the criminals whom they constantly endeavour to reclaim.

" Lost Girls " relates the reactions of a supply teacher who is thrust into the strange high-tension life of a girls' remand home. Frustration, hope and growing experience chase across the pages. Arguments for reforms of remand homes are implemented by reading this book. However, by possessing the qualities of over-chattiness and somewhat irritating naivety it suffers in comparison with " By Courtesy of the Criminal."

JEAN GRAHAM HALL.

The Police and Crime Detection Today. Second edition. By Reginald Morrish. London: Geoffrey Cumberlege, Oxford University Press. 1955. 162 and (index) 3 pp. (12s. 6d. net.)

In the earlier chapters of this admirable book, first published in 1946 and now presented in a new and enlarged edition, ex-Chief Inspector Morrish is concerned with the work of the detective officer in the field. He presents in rapid review the duties, powers and professional technique of the plain-clothes policeman and of the organisation within which he works. He has found room also for a summary but adequate account of the law of evidence in criminal cases. These pages could hardly be bettered as an introduction to the subject for anyone contemplating a career in this fascinating but infinitely exacting profession.

To readers of this Review, however, it is the second part of the work that is likely to prove of the greatest interest. Here the author passes behind the scenes into the forensic laboratory. Most of us are aware in general terms of the important part now played by science in the work of detection. The expert witness is a familiar figure in the criminal courts. But it will be a very learned reader who does not find something new to him here. How many of us, for example, could explain off-hand the difference between micro-photography and photomicrography, and the varying uses of each process?

The book is well illustrated and written in an agreeably straightforward style. Nobody who is interested in crime, whether as student, practitioner or merely potential victim, could fail to profit by it.

CYRIL HARE.

Six Ventures in Villainy. By Jack Smith-Hughes, Barrister-at-Law. London: Cassell & Co., Ltd. 1955. xi and 227 pp. (no index). (15s. net.)

Mr. Smith-Hughes' new book is divided into three parts—ventures in cupidity, in kidnapping, and in lechery. All the cases are taken from the late eighteenth and early nineteenth centuries, a robust era indeed. Some of the cases—for example, those of Lord Baltimore and the Earl of Kingston—are well known, but the virtue of their treatment in this book lies in the way they are set into the social background of the times. Much of this is highly diverting, not to say incredible, to present-day readers, and has obviously required a great deal of research by the author. The result is a book which may prove caviare to the general crime addict, but provides a solid meal for those whose tastes have not been spoiled by the modern matter-of-fact style of most crime books.

M. W. M.

My Forty Years at the Yard. By Hugh Young, C.B.E. London: W. H. Allen & Co., Ltd. 1955. 252 pp. (no index). (16s. net.)

Mr. Young was until recently Commander, C.I.D., at New Scotland Yard, and in this book he describes his life from his early days in the Scottish Highlands until he retired. The greater part of the book is devoted to his " Case Book," in which he describes in some detail eight cases, some of them well known, in which he was involved. Written for a popular market, the book contains little for the criminologist, and one wishes that Mr. Young, or someone of his calibre, would give us a really serious case-book to use alongside our Gross or our Morrish. Probably this is too much to hope for, the financial rewards of such writing being vastly less than those provided by writing for the mass market. This is not to say that Mr. Young's book lacks merit—on the contrary, it is a sincere, straightforward piece of work which most of our readers will enjoy.

M. W. M.

Crime Without Punishment. By Anthony Heckstall-Smith. London: Allan Wingate (Publishers), Ltd. 1955. 274 pp. (12s. 6d. net.)

Mr. Heckstall-Smith recently served a term of imprisonment for fraudulently converting money paid to his firm for the purchase of gold-mining shares. In this book he describes at length how he came to be inveigled into a patently bogus business by a trio of experienced international swindlers. As a candid record of folly and self-deception it is not without interest; but the reader will search in vain for any useful indication of the *modus operandi* employed by the criminals, since the author's whole case is that from first to last he was enveloped in a fog of blank non-comprehension.

CYRIL HARE.

Books Received:

Stone's Justices' Manual. Eighty-seventh edition. By James Whiteside and J. P. Wilson. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. 1955. Vol. 1, cccxxvii and 1,330 pp.; Vol. 2, vii and 1,620 and (index) 220 pp. (Thin edition 82s. 6d. net; thick edition 77s. 6d. net.)

Cases and Statutes on the Administration of the Criminal Law. Revised edition selected and arranged by E. R. Keedy, Emeritus Professor of Law, University of Pennsylvania, and R. E. Knowlton, Associate Professor of Law, Rutgers University. Indianapolis: The Bobbs-Merrill Company, Inc. 1955. xiv and 526 and (index) 10 pp. ($7.50 net.)

The Verdict of You All. By Rupert Croft-Cooke. London: Secker & Warburg. 1955. 254 pp. (15s. net.)

Women of the Streets. A sociological study of the common prostitute. Edited by C. H. Rolph. London: Secker & Warburg. 1955. xvi and 245 and (index) 3 pp. (21s. net.)

Murderers In Our Midst. By Stanley Firmin. London: Hutchinson. 1955. 192 pp. (16s. net.)

Police Drugs. By Jean Rolin. London: Hollis & Carter. 1955. 190 and (bibliography) 4 pp. (12s. 6d. net.)

Very Private Enterprise. An anatomy of fraud and high finance. By Aylmer Vallance. London: Thames & Hudson. 1955. v and 205 pp. (15s. net.)

The Woman in the Case. By Edgar Lustgarten. London: Andre Deutsch, Ltd. 1955. 218 pp. (10s. 6d.)

Articles:

Quaderni di Libera Analisi. Raccolta di studi sulla vita erotica umana. Primo quaderno: Novembre 1954. The first of a collection of studies on human sexual-affective life.

International Criminal Police Review, May, 1955.
Police in Greenland—an inspection trip by dog sleigh, p. 131.
Police methods, p. 137.
Illegal drug traffic, p. 148.

Law Times, Vol. 219.
Magisterial topics, p. 288.

Justice of the Peace, Vol. 119.
Prosecutions under the Vehicles (Excise) Act, 1949, p. 310.
Police court or magistrates' court? p. 312.
The Magistrates' Courts Act, 1952—decisions of the High Court, p. 343.
Making crime pay, p. 346.

Police Review, Vol. 63.
Agricultural vehicles—exemptions, p. 312.
Police work—a profession? pp. 330, 346.
On writing reports, p. 384.

Police Chronicle.
Evidence of previous convictions, May 6, 1955, p. 9.

THE
CRIMINAL LAW
REVIEW

Editors
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Editorial

Appeals to the House of Lords

"If in any case the . . . defendant obtains the certificate of the Attorney-General that the decision of the Court of Criminal Appeal involves a point of law of exceptional public importance, and that it is desirable in the public interest that a further appeal should be brought, he may appeal from that decision to the House of Lords, but subject thereto the determination by the Court of Criminal Appeal of any appeal . . . shall be final." So reads subsection (6) of section 1 of the Criminal Appeal Act, 1907, and by section 16 of the Criminal Justice Act, 1925, the application for the Attorney-General's fiat (as it is commonly called) must be made within seven days from the date when the decision of the Court of Criminal Appeal was given.

Earlier this year Raymond Blackburn, a solicitor and not long ago a Member of Parliament, was convicted at the Old Bailey on charges of fraud. His appeal on the ground that the jury had not been instructed to give him the benefit of the doubt was dismissed by the Court of Criminal Appeal ([1955] Crim.L.R. 323) and his application for the Attorney-General's fiat was refused. In March, at Manchester Assizes, Murtagh and Kennedy were convicted of murder and manslaughter respectively for killing a man by running him down ([1955] Crim.L.R. 315) and the Court of Criminal Appeal, sitting as a full court of five judges, allowed the appeal (see p. 506 below) on the ground that the learned judge in his summing-up had not adequately explained to the jury that although they might not accept the defendants' explanation they should acquit them if the explanation left them in doubt. *Blackburn* was not referred to in the judgment of the Court of Criminal Appeal although it had been cited by counsel (Miss Rose Heilbron, Q.C.) in argument and she had submitted (*The Times*, May 25, 1955) that if *Blackburn* was against her it was wrong. In his elaborate review of the matter (p. 464 below) Professor Glanville Williams also concludes that *Blackburn* was wrongly decided.

What should be said by a judge in summing up on the question of doubt seems clearly a matter of exceptional public importance and it may be wondered if obtaining the fiat of the Attorney-General is necessarily the best procedure and whether there is any good reason why leave to appeal to the House of Lords should not be obtained in the same manner in criminal as in civil cases.

Safer driving

A suggestion has been put forward in *The Magistrate* (June, 1955, p. 68) in an article under this heading that certain classes of driver should carry on their vehicles distinguishing marks and conform to certain speed limits. It is suggested that in addition to the " L " signs of learner drivers there should be different signs for the newly qualified, the young and the old, those convicted of careless or dangerous driving or driving under the influence of drink and for certain goods vehicles and other heavy vehicles; in all about ten new signs would be needed.

Approved schools

The Home Secretary, when opening a new classifying department at an approved school near Warrington, said that eight more approved schools would be closed this year. Twenty have been closed since 1950. The decision to close the schools was taken as a result of the continued decline in committals to approved schools. " In so far as this is a reflection of a substantial decrease in the volume of juvenile delinquency it is a matter for great satisfaction," he said.

Metropolitan police report

Once again the Commissioner of Police for the Metropolis in his report for 1954 (Cmd. 9471) is able to show a further decrease in crime; the percentage reduction in the number of indictable offences was 5½ compared with 1953 and for the first time since the war the figure dropped below that for 1938. A matter of congratulation is that the percentage of indictable crimes cleared up was 32·7 (1953, 31·9), the highest figure ever recorded except in 1942.

It is noticed that there was a slight drop in the number of offences against the person, mainly accounted for by a drop of 115 (13·2 per cent.) in the number of offences against females other than rape, of which there were 27 cases as compared with 17 in 1953.

Of the offences against property the main categories, shop-breaking, burglary, housebreaking and small simple larcenies declined, whilst there was an increase in thefts from vehicles and by servants, fraud and shoplifting.

As regards traffic the year was a disappointing one; the total casualties increased by 9·5 per cent., mainly in the latter part of the year.

Illicit drug traffic

The United Kingdom has published its annual report to the United Nations on the traffic in opium and other dangerous drugs. Seizures of Indian hemp and prosecutions for illegal possession showed a substantial increase whilst opium traffic declined. There are estimated to be 317 known drug addicts, of whom 169 are women and 148 men. Morphine is used by about 65 per cent. of the known addicts, heroin and pethidine by 17 per cent. and 16 per cent. respectively. We publish a letter on the recent ban on the production of heroin on p. 514.[1]

Horror comics

Dr. Hilde Mosse, director of the Lafargue Psychological Clinic in New York and school psychiatrist to the New York City Board of Education, said that violence among children in America of the vicious kind which now existed was not known before the advent of the horror comic. Dr. Mosse stated that the number of these publications had increased enormously; in 1948, 60 million a month were published and last year this figure had grown to between 90 and 100 million. She considered the recent Children and Young Persons (Harmful Publications) Act (see [1955] Crim.L.R. 442) to be a model and that it had given a lead to the world; it will certainly have less to achieve in the United Kingdom than it would in America.

Coroners' juries in Northern Ireland

The Northern Ireland Minister of Home Affairs has made an Order, coming into force as from July 1, revoking the

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[1] A deputation from the Council of the British Medical Association has seen the Home Secretary (H.C. Debates, Vol. 543, col. 2103; July 14, 1955).

Order under which it was competent for H.M. Coroner for Belfast to hold an inquiry into the cause of death without a jury.

As from that date, a formal inquest is to be held with a jury, which, however, following the passing of the recent Act dealing with Coroners, consists of six persons instead of the usual twelve.

Parliament

Dangerous weapons

In a recent trial for the murder of a man killed with a stiletto, the jury recommended that such knives should not be sold to the general public. The question of prohibiting the sale of dangerous knives has frequently been considered but it is difficult to distinguish between those knives which have a legitimate use and those the sale of which should be prevented and so no such move has been made (H.C. Debates, Vol. 542, col. *25* ; June 16, 1955).

Prison sentences

The Howard League for Penal Reform has sent a letter to the Home Secretary proposing that a Departmental Committee should be set up to consider ways of reducing the number of short prison sentences. The Home Secretary is in some doubt as to whether setting up such a Committee would be the wisest course, but he is aware of the problem of such sentences and is giving careful consideration to the proposals of the Howard League (Vol. 542, col. 1501 ; June 23, 1955).

Police in the railway strike

The Home Secretary paid tribute in the Commons to the work done by the police during the railway strike: 1,060 police officers from other forces assisted the Metropolitan police during the strike and, apart from certain men engaged on specialised duties, all regular officers below the rank of superintendent were required to perform twelve hours' duty a day in the Metropolitan police district. Special arrangements were made concerning the overtime allowances of detective officers and inspectors and chief inspectors of the uniform branch. Deposits and other moneys forfeited by policemen unable to go on holiday because of the cancellation of leave during the emergency will be reimbursed (Vol. 542, col. *22* ; June 16, 1955).

Police recruitment

Provincial police forces are not taking much advantage of the deferment from National Service which is allowed to police cadets (see [1955] Crim.L.R. 271) (Vol. 543, col. 506 ; June 30, 1955).

Offences by mental defectives

Circular H.M. (55) 46 of May 10, 1955, *advises* medical superintendents to inform the police of sexual acts by certified mental defectives ; it does not *require* them to do this, although it has been so understood by some. The circular was issued after consultations between the Minister of Health and the Home Secretary, because the earlier procedure in force since 1951 did not have sufficient regard to the duty of the police to investigate criminal offences concerning defectives (Vol. 542, col. 1029 ; June 20, 1955).

Food and drugs

The Food and Drugs Amendment Act, 1954 (see [1955] Crim. L.R. 50), cannot be brought into operation until certain regulations replacing provisions contained in the present legislation have been considered by the Food Hygiene Advisory Council. It is understood that the Council are now considering such regulations and the Act will be put into force as soon as possible (Vol. 542, col. *19* ; June 16, 1955).

Lotteries

No legislation to legalise small lotteries conducted on a non-profit-making basis for the benefit of social, political, religious and sporting organisations is to be introduced by the Government in the near future (Vol. 542, col. 1497 ; June 23, 1955).

Collective punishment

Systems of collective punishment still exist in some colonial territories, although it is a punishment seldom used. It is based on the need to penalise communities who have sheltered offenders or refused to help the authorities. There is no satisfactory alternative and it is considered unwise to abolish such punishment altogether (Vol. 542, col. *70* ; June 22, 1955).

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Review. They should be sent to the EDITOR, *Criminal Law Review*, 3 CHANCERY LANE, LONDON, W.C.2. *Every effort will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

The Direction to the Jury on the Burden of Proof

By GLANVILLE WILLIAMS, LL.D.

Quain Professor of Jurisprudence in the University of London

The recent cases of *Blackburn* [1955] Crim.L.R. 323, *Murtagh and Kennedy,* p. 506 below, and *Hepworth and Fearnley, The Times,* July 19, 1955, show that directions to the jury have not settled down in a satisfactory mould since the upheaval occasioned by *Summers* (1952) 36 Cr.App.R. 14. In the first case an appeal failed notwithstanding what might seem to be quite a strong argument against the sufficiency of the direction ; in the others it succeeded, and the effect of the second decision seems to be to reintroduce the reference to " doubt " that had sometimes been thought to have been cast out by *Summers.* In view of the considerable uncertainty of the present law it may be well to begin some distance back.

History

The direction to the jury in terms of reasonable certainty and reasonable doubt

Every one knows that the burden of proof in a criminal case rests upon the prosecution, subject to some exceptions not necessary to be discussed. That the rule applies even in respect of so-called " defences " was recently reaffirmed by the Privy Council in *Chan Kau* [1955] Crim.L.R. 187. What is not so happily settled is the quantum of the burden, or at any rate the way in which the quantum should be explained to the jury.

Two directions to the jury during the nineteenth century may be quoted to show how the law was then understood. The first is the direction of Pollock L.C.B. in *Manning* (1849) 30 C.C.C. Sess.Pap. 654. He said: " If the conclusion to which you are conducted be that there is that degree of certainty in the case which you would act upon in your own grave and important concerns, that is the degree of certainty which the law requires and which will justify you in returning a verdict of guilty."

The second is the summing up of Lord Campbell C.J. in 1856: " Unless upon the part of the prosecution a clear conviction has been brought to your minds of the guilt of the prisoner, it is your duty to acquit him. You are not to proceed even upon a strong suspicion ; there must be the strongest conviction in your minds that he was guilty of this offence ; and if there be any reasonable doubt remaining in your mind you will give him the benefit of that doubt" (*Trial of William Palmer* (1856) Notable British Trials Series, p. 311).

The direction in terms of reasonable doubt became so well established and so well understood that it was not regarded as necessary in every case to explain what was meant by reasonable doubt. The judge might, however, stop to distinguish between satisfaction beyond reasonable doubt and satisfaction on the balance of probability, the second not being sufficient in a criminal case. Or he might say, shortly, that a reasonable doubt meant "such a doubt not as some people 'conjure up' about anything, but such a doubt as would influence a man in his own ordinary daily affairs" (*per* Darling J. in *The Trial of Steinie Morrison,* Notable British Trials Series, p. 276). The phrase "ordinary daily affairs," which may be interpreted by the jury to include quite trivial matters, is not so satisfactory as Pollock L.C.B.'s "grave and important concerns." Obviously a man's life is not to be adjudged away on the same evidence as would determine one to change one's grocer.

The direction to the jury in terms of reasonable doubt received the blessing of the House of Lords in *Woolmington* [1935] A.C. 462 at 481 and *Mancini* [1942] A.C. 1 at 11–13.

The repudiation of the language of reasonable doubt

It might have been thought that these remarks, embodying as they did the settled practice of the judges, would have fixed the law for all time. Yet we have witnessed a remarkable change of practice initiated by the Court of Criminal Appeal, which has resulted in the abandonment of reference to reasonable doubt in directions to juries.

There was a premonitory rumbling before *Woolmington,* in a case where Humphreys J. had indicated a shade of dissatisfaction with the traditional formula. "The proof by the prosecution, it is said, must be proof beyond any reasonable doubt. I never think myself that that expression adds anything to the law as I have stated it to you, for what must be done is to prove a person's guilt, and if there is reasonable doubt about the matter, then the case has not been proved at all, and if the case has been proved the English language is clear enough to make it obvious that what is meant is that it has been proved beyond reasonable doubt" (*The Trial of Rattenbury and Stoner,* Notable British Trials Series, 1935, p. 250). However, the learned judge went on to say that it was the practice to say to juries that the prosecution must prove the case beyond any reasonable doubt, and he explained that this excluded a conviction merely on great suspicion where the jury were not quite sure that he did it, but on the other hand did not refer to fanciful doubts. " It only means dealing with the matter in the same way that you would deal with any important matter in your own life and your own affairs."

The obvious objection to casting aside the direction about reasonable doubt is that it tends to have the result of assimilating the quantum of proof in criminal cases with that in civil cases. The plaintiff in a civil action must prove his case, but it is usually thought that this proof need only be proof on a balance of probability. The criminal onus is generally thought to be higher. If this is so, it is hardly possible to say that the phrase " proof beyond reasonable doubt " means the same as the word " proof " by itself.

It may perhaps be replied to this that the traditional distinction between criminal and civil cases is a mistake, and that in both the proof required is the criminal standard of proof beyond reasonable doubt. This was the line taken by Sir Carleton Allen, in his book *Legal Duties*. He argued, at p. 287, that even in civil cases there should be the utmost degree of certainty or conviction which, upon the evidence of circumstances, things and statements, can be attained by our limited powers of reasoning and observation. Whatever attraction this opinion may have, it has not so far been judicially endorsed; on the contrary, as will be shown, the distinction between criminal and civil cases has been reaffirmed.

Five years after *Woolmington*, namely in *Kritz* [1950] 1 K.B. 82, a more decisive step was taken to reformulate the issue for the jury. The Common Serjeant had directed the jury that they must be " reasonably satisfied " of guilt, and this direction was upheld on appeal. Lord Goddard C.J. said that it was enough for the jury to " be satisfied," to " feel sure," and to be " fully satisfied " (all three phrases were used). The culmination came in *Summers* (1952) 36 Cr.App.R. 14, where Lord Goddard disapproved the " reasonable doubt " formulation. " I have never yet," he said, " heard a court give a satisfactory definition of what is a reasonable doubt, and it would be very much better if summings-up did not use that expression. . . . It is far better . . . to direct a jury: ' You must not convict unless you are satisfied by the evidence that the offence has been committed.' The jury should be told that it is not for the prisoner to prove his innocence, but for the prosecution to prove his guilt. If a jury is told that it is their duty to regard the evidence and see that it satisfies them so that they can feel sure when they return a verdict of Guilty, that is much better than using the expression 'reasonable doubt' and I hope in future that that will be done." The above quotation is taken from the *Criminal Appeal Reports,* in which it is understood that Lord Goddard revised his judgment.

In the months following this decision the judges for the most part complied with Lord Goddard's direction and abandoned the formula of reasonable doubt. But unfortunately they did not in its place adopt the second and more emphatic of his suggested formulas and direct the jury that they should be satisfied so that they could feel sure of the verdict of guilty. In *Merrifield,* a charge of murder by poisoning, Glyn-Jones J. adopted a formula that may fairly be taken as equivalent. He told the jury that "the burden is upon the prosecution to prove the case to your satisfaction. . . . If after considering the defence evidence you feel that the prosecution's evidence has not convinced you, the prosecution fails." Here the word "convinced" is perhaps as strong as "satisfied so that you can feel sure," and an appeal against the wording of the direction failed (*The Times,* September 3 and 4, 1953). In other cases, however, judges merely directed the jury, following the first of the two *Summers* formulas, that they must be "satisfied" of the facts. Whether such a direction was sufficient was the issue in the three cases of *Blackburn, Murtagh and Kennedy* and *Hepworth and Fearnley* mentioned at the beginning of this article.

The recent cases

Blackburn

In the first of these cases, *Blackburn,* the appellant's chief ground of appeal was that the judge in directing the jury as to the burden of proof had not made use of the word "sure," nor any word equivalent to it, nor had he told the jury to give the defendant the benefit of the doubt; and in parts of his summing-up, referring to circumstances in respect of which there was a conflict of evidence, the judge put it to the jury in terms such as this: "You have to decide whether you believe Mr. A or Mr. B," without making it clear to the jury that there might be some intermediate position in which they did not believe either Mr. A or Mr. B, but they were in some doubt as to what really happened.

The judgment of the Court of Criminal Appeal has not been fully reported, but according to the official transcript from the shorthand notes, Gorman J., delivering the judgment of himself, the Lord Chief Justice and Ormerod J., commenced by pointing out that it is for the judge to direct the jury as to burden of proof, and if he fails to do so his omission is not cured by anything said by counsel in their speeches to the jury. On the other hand, no particular form of words is sacrosanct or absolutely necessary. The learned trial judge had many times, in directing the jury, told them that they must be " satisfied " upon the various issues. The court concluded by saying that having regard to these directions " it was properly made clear to the jury that the burden of proof was upon the prosecution and if that burden of proof had not been discharged then the prisoner was entitled . . . to be acquitted."

This last sentence is open to the criticism that it does not conclude the issue that had been argued, for the question was not merely whether the jury had been properly directed as to the incidence of the burden of proof but whether they had been properly directed as to its quantum. However, the court must have intended to hold that a direction to the jury that they must be " satisfied " of the guilt of the defendant is sufficient for both purposes. It appears, therefore, that neither the *Woolmington* instruction in terms of reasonable doubt, nor the second of the two *Summers* instructions in terms of being satisfied so that they feel sure, is essential in the summing-up, and there need be no reference to doubt at all. Nor, if a word like " satisfied " is used, need the jury be told that the burden of proof is on the prosecution.

It may be mentioned before passing on that the appellant applied for the fiat of the Attorney-General to take the case to the House of Lords as involving a point of law of exceptional public importance on which it was desirable in the public interest that a further appeal should be brought. The fiat was refused.

Murtagh and Kennedy

The second case is *Murtagh and Kennedy,* the case of alleged " murder by motor-car " (p. 506 below). The trial judge, in a summing-up lasting two hours and a half, said near the commencement that the burden of proof from beginning to end rested upon the prosecution, and that the jury had to be satisfied that guilt had been proved. He later said: " If you find on full and fair consideration that it is not safe to reject the account of these two men that this was a pure accident, . . . acquit them both."

The jury convicted the driver of murder, and his passenger, the second defendant, of manslaughter, and an appeal was taken on the direction as to burden of proof. The appeal was at first heard by a court of three judges (Hilbery, Gorman and Havers JJ.), but since they failed to agree it was re-heard by a full court which included Streatfeild and Devlin JJ. as additional members.

Counsel for the appellants were prepared to argue that the decisions in *Summers* and *Blackburn* were wrong, but they also sought to distinguish these cases. In *Summers*' case there was no explanation being put forward by the accused, as there was here, and the trial judge in the present case had not used the second *Summers* formula of " satisfies you so that you can feel sure." *Blackburn* could be distinguished as a case of fraud, whereas the present charge was one of homicide.

Another argument in support of the appeal was that the word " satisfied," without more, did not distinguish between the necessary degree of satisfaction in criminal and civil cases. Upon this Hilbery J. interjected: " I personally have never seen the difference between the onus of proof in a civil and criminal case. If a thing is proved, it is proved, but I am not entitled to that view." Counsel for the Crown met the appellants' argument by saying that a distinction between the criminal and civil burden was expressed by the judge when he directed the jury that they had to be satisfied that *guilt* was proved. The word " guilt " provided the something more necessary to distinguish the special degree of the burden in criminal cases.

The judgment of the court was read by Hilbery J. Having referred to the issues of fact and to various passages in the summing-up, the learned judge said that in view of the earlier happenings on that night there was some substance in the case put forward by the appellants, and between the case put forward by the prosecution and that put forward by the appellants there was a narrow issue of fact. Having regard to the evidence it was pre-eminently a case where it was essential for the judge to make clear to the jury three possible positions in which they might find themselves, bearing in mind throughout that it was not for the accused to establish their innocence—that was to say: (1) if they (the jury) accepted the explanation of the accused, they must acquit; (2) short of accepting that explanation, if it left them in doubt, they must acquit; (3) on consideration of the whole of the evidence they must be satisfied of the guilt of the accused of the crimes alleged against them.

The only way in which the judge dealt with the second position was by the use of the expression " if you do not think it safe to reject the explanation of this accident put forward by the defendants, acquit them both." No doubt the judge meant by that expression to make it plain to the jury that the second position was a possible one, but the expression itself was equivocal.

The jury were not lawyers. To a lawyer the expression might mean one thing, to a layman another, but the situation should be made plain to the jury as laymen. As such, they might have understood it to mean no more than " if you feel you can accept." It was not possible to say that it made the situation plain.

The objection to the summing-up, however, did not rest there, for finally the judge did not make plain to the jury that whatever view they took of the explanation given by the defendants, short of accepting it, they must still consider whether upon the whole of the evidence they were sure that Murtagh intended to do grievous bodily harm or to kill by dangerous driving on the occasion when the deceased met his death.

For those reasons, in the opinion of the court, the summing-up, which was full and unexceptional in all other respects, was defective on that one vital point. In the circumstances it was unsafe to allow the two convictions to stand.

It may perhaps be said with respect that the outcome of this decision is satisfactory, and that the Court of Criminal Appeal by its interposition has prevented what might have been a miscarriage of justice. The decision is particularly welcome in that it restores the necessity for directing the jury on their duty to acquit if they are left in doubt as to the guilt of the accused. It is difficult to know how much is now left of *Blackburn,* which was not referred to in the judgment in the later case. In *Blackburn,* it was held that the judge need not refer to the possibility of doubt; in *Murtagh* he was required to do so. A possible view would be that the full court in *Murtagh* has impliedly overruled the court of three in *Blackburn*. If some distinction must be found, it is that in the later case an " explanation " was put forward by the defendants, and a " narrow issue of fact " presented. But of course there was also an " explanation " in *Blackburn,* in the sense that the defendant denied the fraud imputed to him. It is not clear what is meant by a " narrow " issue of fact, as opposed, presumably to a " wide " one, but the proper direction to the jury can hardly differ between them. It cannot be the law that the judge need give the jury a proper direction upon the burden of proof only if he thinks that the defendant may have a good answer. The decision of this question is, surely, for the jury, who must be given the proper direction in law whatever the judge may think of the credibility of the defence.

The onus in civil and criminal cases

It is disappointing that the judgment of the Court of Criminal Appeal gives no help on the difference, if any, between the criminal and civil onus. One would have expected some comment on the rather remarkable argument of counsel for the prosecution that the jury are adequately instructed on this difference by the use of the word " guilty." This argument puts into the word a wealth of meaning that it would hardly convey even to a lawyer, and, as Hilbery J. pointed out in his judgment, the jury are not lawyers.

Effect of the decision in Murtagh

Is it too bold to suggest that the judgment in *Murtagh* is a confession of the failure of the attempt in *Summers* to exclude a direction on the question of doubt? What may have been behind that attempt was the fear on the part of Lord Goddard and the other members of the court that a jury directed as to what they are to do in case of doubt may be apt to create a doubt in order to avoid the heavy responsibility of convicting. It seems obvious that a direction which tells the jury only that they must be satisfied, or even satisfied so that they can feel sure, and which avoids mention of the possibility of doubt, is less favourable to a defendant from a psychological point of view than one which admits and provides for this possibility. With the former direction, the jury are much more likely to say to each other " The judge thinks he did it " than if the possibility of doubt is dealt with. The *Summers* direction, then, is one tending to reduce acquittals. Whether that is regarded as desirable perhaps depends on whether one thinks that juries are prone to acquit too readily. The danger is that although the *Summers* type of direction may assist the conviction of the ten guilty men of the traditional maxim, it will also assist the conviction of the eleventh man who is innocent.

That this danger exists can be seen from the facts of *Murtagh*. The defence in that case was not merely a plausible hypothesis of the defending counsel, although of course even a hypothesis would need careful attention. In fact, as was pointed out by the Court of Criminal Appeal, the evidence established that before the tragedy the defendants had twice been to the police station to invoke the help of the police, and must have known when they drove for the last time to the spot where the killing was shortly to take place that the police would be there either by the time when they arrived or within a very short time. It is not usual for a person who contemplates murder to perform it in public when the police may arrive on the spot at any moment. In addition, witnesses for the prosecution corroborated the defendants' evidence that the deceased was, at the time when he was struck, either lifting the coal cellar lid with the intention of throwing it or had already lifted it and was holding it up in a threatening attitude. Taking this evidence as a whole, the improbability of murder in the circumstances, and the proof of facts bearing out the defence of accident, should have told strongly in favour of the defence. If there is any meaning in giving a defendant the benefit of the doubt, especially on a capital charge, Murtagh should have been given it. Yet the jury convicted him of murder, and part of the responsibility for what must be taken to have been an incipient miscarriage of justice must be borne by the form of the direction which avoided reference to the possibility of doubt.

Hepworth and Fearnley

The latest case was a prosecution for receiving stolen property where once again the Recorder's only direction to the jury on the burden of proof was that they had to be " satisfied " of guilt. A conviction was quashed on account of the insufficiency of this direction. The case is an authority for saying that a direction in these terms is inadequate in a case of receiving; how far it is to be taken beyond this is not altogether clear. According to the official shorthand note, the Lord Chief Justice, in giving judgment, said that it is always desirable that a jury should be told that the burden of proof is on the prosecution. Then, in a receiving case, it is generally desirable, though there may be circumstances in the particular case which would render it unnecessary, to remind the jury that if an explanation for possession of the goods is given by the prisoner, although the jury may not be convinced that it is true, if they think it may be true it would mean that the prosecution have not proved the case because the jury would remain in some degree of doubt. " A case is never proved if any jury is left in any degree of doubt."

On the use of the word " satisfied," Lord Goddard said: " It may be that in some cases the word ' satisfied ' is enough. Then, it is said that the jury in a civil case has to be satisfied and, therefore, one is only laying down the same standard of proof as in a civil case. I confess that I have had some difficulty in understanding how there is or there can be two standards; therefore, one would be on safe ground if one said in a criminal case to a jury: ' You must be satisfied beyond reasonable doubt,' and one could also say: ' You, the jury, must be completely satisfied,' or better still: ' You must feel sure of the prisoner's guilt.' But . . . it is not the particular formula of words that matters. . . . The point is that the jury should be directed, firstly, that the onus is always on the prosecution; secondly, that before they convict they must feel sure of the prisoner's guilt. If that is done, that will be enough."

The outcome of this unhappy chain of cases cannot be stated with confidence, but it may be expected that in future the word " doubt " will be used more often than in the recent past. It may be noted that Lord Goddard took no part in *Murtagh*, and that the judgment of the full court in that case had not been fully reported when he delivered the judgment in *Hepworth*.

Does the quantum of proof vary with the crime?

In *Hobson* (1823) 1 Lew.C.C. 261, Holroyd J. said: "The greater the crime the stronger is the proof required for the purpose of conviction." Little use has been made of this idea by the criminal courts, but it has been revived by Denning L.J. as a means of distinguishing between the criminal and civil onus. This was in a matrimonial case, *Bater* v. *Bater* [1951] P. 35, where the Commissioner in giving judgment had said that to succeed in an allegation of cruelty the wife had to satisfy him that there had been injury, etc., "and she has to prove her case beyond reasonable doubt." An appeal from his judgment was dismissed, and the Court of Appeal made some general remarks on the subject of onus of proof. Bucknill L.J., with whom Somervell L.J. agreed, thought that the Commissioner's remark was right because a charge is not proved if at the end of the case the judge has reasonable doubt in his mind whether it has been proved. "To be satisfied and at the same time to have a reasonable doubt seems to me to be an impossible state of mind." This proposition, which was stated quite generally, seems to imply that the quantum of proof required in a civil and a criminal case is the same, for the formula generally used in criminal cases was applied to the civil case. On the other hand, the actual case concerned a matrimonial offence, which, according to one view, is exceptional in this respect.

Denning L.J., the other member of the court, evidently wished to guard himself from being thought to say that the standard was the same in a civil as in a criminal case. He said: "It is of course true that by our law a higher standard of proof is required in criminal cases than in civil cases. But this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard.

"As Best C.J. and many other great judges have said, 'In proportion as the crime is enormous, so ought the proof to be clear.' So also in civil cases, the case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require for itself a higher degree of probability than that which it would require when asking if negligence is established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature; but still it does require a degree of probability which is commensurate with the occasion.

"A reasonable doubt is simply that degree of doubt which would prevent a reasonable and just man from coming to the conclusion. So the phrase 'reasonable doubt' takes the matter no further. It does not say that the degree of probability must be as high as 99 per cent., or as low as 51 per cent. The degree required must depend on the mind of the reasonable and just man who is considering the particular subject-matter. In some cases 51 per cent. would be enough, but not in others. When this is realised, the phrase "reasonable doubt" can be used just as aptly in a civil case . . . as in a criminal case. . . . The only difference is that, because of our high regard for the liberty of the individual, a doubt may be regarded as reasonable in the criminal courts, which would not be so in the civil courts."

The learned Lord Justice's view that the quantum of proof required on a criminal charge, at any rate for an indictable offence, is or should be higher than in an ordinary civil action seems reasonable. That there is a difference between the civil and criminal standards is confirmed by such cases as *Carr-Briant* [1943] K.B. 607. But if this is so, it would seem to be regrettable if the same phrase "beyond reasonable doubt" is to be used to formulate the civil as well as the criminal burden. To use the same language for both can only result in confusion. Moreover, if it is true that the civil burden can be discharged in some cases by evidence of 51 per cent. probability, it would seem to be an abuse of language to describe this as proof beyond reasonable doubt.

It is submitted, notwithstanding the statement to the contrary of Holroyd J. and Best C.J., as approved by Denning L.J., that the quantum of proof required in criminal cases is a uniform one. On the whole there does not seem to be any adequate reason for permitting a lower standard for summary offences, or for requiring a higher standard for capital offences, at any rate as a matter of abstract theory; in practice, of course, there is bound to be a difference in the way the two are treated. The irrevocable nature of capital punishment has lately given rise to the Home Office practice of commuting the death penalty in cases where, although there is no reasonable doubt of the accused's guilt, there is an unreasonable doubt—a scintilla of doubt (H.C. Debates, Vol. 61, col. 2437; March 24, 1955). This is understood to have been the reason for the commutation in *Onufrejczyk*, discussed in [1955] Crim.L.R. 205. But the practice is not uniform, and some persons have been hanged although there was at the time a violent public controversy as to their guilt. This is a special problem in relation to capital punishment, and has no bearing on the issue of burden of proof.

Letter from Israel

Tel-Aviv,
May, 1955.

" Shop " and " Workshop "

Does a " shop " include a " workshop " for the purpose of housebreaking offences committed prior to the enactment of the Larceny Act, 1916? This question, curiously enough, seems never to have been authoritatively decided by any English court. In 1839, the question was answered in the negative by Baron Alderson in *R.* v. *Sanders* (1839) 9 C. & P. 79, where the prisoner was indicted for breaking into and stealing coal from a blacksmith's shop. In directing the jury to acquit the prisoner, Baron Alderson held that to come within the provisions of the statute, " the place must be more than a mere workshop, it must be a shop for the sale of articles; a workshop, such as a carpenter's shop or a blacksmith's shop would not . . . be within the Acts." Four years later, in 1843, an affirmative answer was given in the case of *R.* v. *Carter* (1843) 1 Car. & K. 173, who was indicted for breaking into a blacksmith's shop and stealing a gun therefrom. It was proved to have been used as a workshop only. Denman C.J., whose attention was drawn to *R.* v. *Sanders* said, in a very short judgment: " I cannot be governed by that case. In my opinion this building has been proved to be such as to fall within the definition in the Act of Parliament." Both cases were decided under the Larceny Act, 1827, section 15 of which made it an offence punishable with lifelong deportation to break into any " shop, warehouse or counting house " and steal any chattel therein.

The Larceny Act, 1861, section 56 of which replaced section 15 of the 1827 Act, did not alter the law in this respect, and the only class of building added was " schoolhouse." Nevertheless, the point of whether " shop " included " workshop " does not seem to have arisen any further, and in 1916, after the new Larceny Act had added in section 26, *inter alia*, factory, workshop and garage to the list of buildings protected under the former Acts, the point became of academic interest only.[1]

It will be shown, however, that this conflict of authority is even today giving rise to practical difficulties in countries whose criminal laws are based on the common law of England. An attempt to solve this conflict was only recently made by the Supreme Court of Israel.

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[1] This conflict of authorities, having no practical importance today, is only briefly referred to in Russell on *Crime*, 10th ed., p. 981, and in the annotations to Halsbury's *Statutes of England*, Vol. 5, p. 1027.

The Palestine Criminal Code Ordinance, enacted in 1936 (and which is still in force today), made it a felony to break and enter a "schoolhouse, shop, warehouse, store, office, counting house, stable, cow house or barn" and commit theft therein (s. 297). For some not very apparent reason the words "factory, workshop and garage" were omitted from that section, although it can hardly be assumed that the legislating authority at that time was unaware of the provisions of the Larceny Act enacted some twenty years earlier in England.

It should be mentioned in parenthesis that section 4 of the Criminal Code Ordinance provides that the Code has to be interpreted in accordance with the principles of legal interpretation obtaining in England, and that expressions used in it are presumed to have the meaning attaching to them in English law. Consequently it was English law which governed the case considered by the Supreme Court of Israel (*Att.-Gen.* v. *Ohanna,* 1954 Supreme Court Judgments (in Hebrew) 82.

An appeal was filed by the Attorney-General against the acquittal of a burglar who had broken into a diamond workshop and stolen a chattel therefrom. It was conceded that unless the diamond workshop came within the meaning of "shop" in the aforementioned section 297 of the Criminal Code Ordinance, the prisoner could only be convicted of simple larceny, punishable with one year's imprisonment. This obviously unsatisfactory result prompted the Attorney-General to invite the Supreme Court to consider and decide: (a) what was the meaning of the word "shop" in the various English statutes passed prior to the Larceny Act, 1916; (b) does the ordinary meaning of the word "shop" in the English language exclude a "workshop"?

In order to arrive at the meaning of "shop" as used in the Act of 1827, and to discover the real intention of the legislature, the Supreme Court had to review the history of burglary and housebreaking in England from the earliest Shoplifting and Larceny Acts of 1691, 1699, 1763, 1827 up to and including 1861. Having regard on the one hand, to the economic and social conditions prevailing during the period in question,[2] and, on the other hand, to the maximum penalty which, until the beginning of the nineteenth century was death, the court came to the conclusion that the tendency of both Parliament and the English courts had been to restrict the categories of buildings protected under the early house-breaking statutes, and that the law was only extended "step by step, either by the addition of new places, or by the omission of limiting clauses. . . ."[3]

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[2] *Theft, Law and Society,* by Jerome Hall, at p. 78.

Relying on this tendency, the Supreme Court preferred to follow Baron Alderson's judgment in *Sanders*' case. In coming to this conclusion, the court relied also on *R.* v. *Chapman and Alderman* (1843) 7 J.P. 132, decided, like *Carter's* case, in 1843, in which Tindal C.J. reportedly said: " . . . the premises here proved to have been entered cannot strictly be termed a 'shop,' that word implying rather a spot where a retail trade is carried on, while a blacksmith's shop partakes more of the character of a warehouse than a shop."[4] The Supreme Court, therefore, held that the Larceny Act, 1916, despite it being a consolidating Act,[5] must be considered as having altered the English law as to larceny to the extent of enlarging the categories of buildings protected by it.

The court proceeded next to deal with the argument that the word "shop" in the English language should be construed as including also a workshop. "Shop" is defined in the *Shorter Oxford English Dictionary* as being, *inter alia,* "a building or room set apart and fitted up for the carrying on of some particular kind of handiwork or mechanised industry; a workshop." In rejecting this interpretation, the court held that the meaning to be attributed to the word "shop" should be its everyday popular meaning, which does not include a workshop unless the word is preceded by the proper adjective, like blacksmith's shop, carpenter's shop, and the like. In arriving at this conclusion, the court relied, *inter alia,* on dicta in *Haynes* v. *Ford* [1911] 2 Ch. 237 at 254, to the effect that:

> "according to the ordinary and popular usage . . . if you tell a person to go to a shop, you do tell him to go to a place in which, if he wishes, he can buy as it is called by retail";

and *Simmonds Aerocessories (Western), Ltd.* v. *Pontypridd Area Assessment Committee* [1944] 1 K.B. 231 at 236,[6] describing the characteristics of a shop as being:

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[3] Radzinowicz, *History of English Criminal Law*, Vol. 1, p. 49.

[4] *R.* v. *Chapman and Alderman* is neither referred to in Russell on *Crime* nor in the annotations to Halsbury's *Statutes of England*. It is mentioned in the *Digest*, Vol. 15, p. 958, § 10688, in Stroud's *Judicial Dictionary*, 3rd ed., Vol. 4, at p. 2775 and in Burrows' *Words and Phrases*, Vol. 5, at p. 103.

[5] *Cf.* dicta to the effect that the Larceny Act, 1916, was never intended to alter the law: *Billing* v. *Pill* [1954] Crim.L.R. 58, and *R.* v. *Williams* [1953] 1 Q.B. 660.

[6] See also *Dennis* v. *Hutchinson* [1922] 1 K.B. 693, *Ritz Cleaners, Ltd.* v. *West Middlesex Assessment Committee* [1937] 2 K.B. 642, and *Deeble* v. *Robinson* [1954] 1 Q.B. 77, 84.

> " . . . a place to which members of the public may resort for the purpose of buying and taking away the goods which are there offered for sale."

The court thus refused to strain the English language in order to give effect to what was presumably the intention of the legislature,[7] reminding one of the words of Stephen J.[8] that in the drafting of a statute

> "it is not enough to attain to a degree of precision which a person reading in good faith can understand; but it is necessary to attain if possible to a degree of precision which a person reading in bad faith cannot misunderstand. It is all the better if he cannot pretend to misunderstand it."

It may be noted in conclusion that the point decided by the Supreme Court of Israel is not without practical interest for territories having criminal codes similar to that of Israel. To cite one example, the Cyprus Criminal Code of 1929, in section 288, provides that the categories of buildings falling under the category of "housebreaking" are "schoolhouse, shop, warehouse, store, office or counting house," omitting any reference to factory, workshop or garage, and thus posing a problem of interpretation which is on all fours with that left undecided by the conflicting decisions in *R.* v. *Sanders* and *R.* v. *Carter*.[9]

URIEL GORNEY,
District Attorney

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[7] The court expressed its doubts regarding the intention of the mandatory legislature and remarked that it might also be possible that the omission of the words "workshop, factory and garage" was due to the supposedly predominant rural character of the country at that time.

[8] *Re Castioni* [1891] 1 Q.B. 167. *Cf.* the dictum of Mr. Justice Holmes in *McBoyle* v. *U. S.* (1930) 51 Supreme Court Reporter, 340: "Although it is not likely that a criminal will carefully consider the text of the law before he murders or steals, it is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed . . . (a statute) should not be extended . . . simply because it may seem to us that a similar policy applies, or upon the speculation that if the legislature had thought of it, very likely broader words would have been used."

[9] Similar clauses are to be found in the Criminal Codes of, *inter alia*, Bermuda, Gambia, Kenya, Nigeria, Nyasaland, Tanganyika, Zanzibar.—EDS].

Committals for Trial

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It is here proposed to consider first the circumstances in which a committal by the magistrates of an accused person for trial before quarter sessions or assizes may be illegal, and secondly, the consequences of such an illegal committal.

Committal procedure

The statutory provisions regulating the committal of accused persons are now contained in the Magistrates' Courts Act, 1952 (to be read with the appropriate sections of earlier legislation). The general principle, subject to several exceptions to be mentioned hereafter, is to be found in section 9 of the 1952 Act, and is to the effect that if the offence [1] is triable at quarter sessions, the accused must be committed to the next quarter sessions, or if the offence is not so triable, to the next assizes for the place where he is to be tried. The magistrates should consider whether the accused would suffer hardship if he were committed to a particular court of assize or quarter sessions under section 11 (1) of the Criminal Justice Act, 1925 (which gives jurisdiction to a court by reason only of the accused having been apprehended, being in custody, or having appeared in answer to a summons, in the particular place); but if they refuse to grant any application from the accused in that behalf, he may appeal to the High Court. If no such hardship is apparent to the magistrates, they may disregard the provision, and there can therefore be no question of an illegal committal, unless they insist on committing the accused when he has notified them of his intention to appeal, and before that appeal has been determined. Any committal on an offence which is not indictable would, of course, be illegal.[2]

If the magistrates commit an accused to quarter sessions on a charge which is not generally within the jurisdiction of any quarter sessions, the committal will be illegal; but if the court of quarter sessions to which the accused is committed has no jurisdiction to try the particular charge, solely because it is not presided over by a "legally qualified chairman," [3] the validity of the committal is saved by section 2 (6) of the Administration of Justice (Miscellaneous Provisions) Act, 1938, under which section any such court of quarter sessions may, although it cannot try the accused, direct that his trial shall take place before some other court of assize or quarter sessions.

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[1] The power to commit refers only to indictable offences: M.C.A., 1952, s. 7.

[2] This was the case in *Bannister* v. *Clarke* [1920] 3 K.B. 598.

[3] In such event the court has no jurisdiction to try the offences listed in the First Schedule to the Administration of Justice (Miscellaneous Provisions)

If the offence with which the accused is charged is triable by quarter sessions, the committal should be to quarter sessions, but a committal to assizes is not illegal in such a case if the magistrates are " of opinion that there are circumstances that make the case an unusually grave or difficult one, or that serious delay or inconvenience would be caused by committal to quarter sessions " (Magistrates' Courts Act, 1952, s. 11). In the absence of such a finding, however, it would seem that a committal to assizes for an offence triable at quarter sessions would be illegal. Moreover—although this does not affect the *legality* of the committal—in Home Office Circulars 63 and 64 of 1954 ([1954] Crim.L.R. 291), magistrates were asked not to commit to assizes merely because the case seemed lengthy or to present some complication, and it was also indicated that if questions of delay or inconvenience were under consideration, attention should first be paid to the power to commit to some other quarter sessions (see below) rather than sending the case to assizes.

Section 10 of the Magistrates' Courts Act, 1952, proves extremely useful in practice, but the exception to the section is also the provision which gives rise to the majority of illegal committals. Under this section, the committal may be to some " foreign " court of quarter sessions or assizes, where the magistrates consider such to be more convenient, " with a view either to expediting [the] trial or saving expense." *But*, and this proviso is most important, the power may not be exercised unless at the time of committal it seems unlikely that the next assizes or quarter sessions (as the case may be) to which the accused would ordinarily be committed, would be held within one month from the date of the committal[4]; the power may also not be exercised if the accused satisfies the court that he would suffer hardship if it were in fact exercised.[5]

Where an accused is committed on bail for trial by quarter

Act, 1938. A recorder—though maybe of many years' standing—is not " legally qualified " if the borough for which the court is held has a population of less than 50,000! The Criminal Justice Administration Bill, now before Parliament, seeks to repeal this provision.

[4] No amount of inconvenience will be allowed to overrule this provision: *R.* v. *Lozynskyj* [1954] Crim. L.R. 866.

[5] The accused has no right of appeal if he fails so to satisfy the court, as he has under s. 9 (2) (*b*) of the M.C.A., 1952 (above).

sessions, and the sessions for the particular county or borough are to be held within five days, the magistrates may commit him to the next quarter sessions but one; but this is only a *power,* and it would be proper for an accused to be committed to quarter sessions or assizes at any time prior to the first working day of that particular sessions or assize. After that day, no bill of indictment may be preferred without the leave of the judge or chairman of the court.[6]

A committal for trial may also be illegal because the depositions have been taken in a manner which did not comply with rule 5 of the Magistrates' Courts Rules, 1952; a committal will not, however, be rendered illegal simply by reason of the admission by the magistrates of evidence which is inadmissible in law: *R.* v. *Norfolk Quarter Sessions, ex p. Brunson* [1953] 1 Q.B. 503, explaining the earlier decisions.

Consequences of an illegal committal

The court of trial has no jurisdiction to try an accused person if he has been illegally committed to that court; if the case reaches the court to which the accused has been so committed, and he is arraigned on the charge, he could presumably plead to the jurisdiction (Archbold, 33rd. ed., § 262), but, in practice, he would probably answer to the general issue, and plead "not guilty." On the illegality of the committal being proved,[7] the court would then be obliged to quash the indictment and discharge the accused. However far the trial had proceeded—and even if a verdict had been given and sentence pronounced—the quashing of the indictment on the grounds of an invalid committal would not be any bar to fresh proceedings being taken against the accused on that charge. He would not be able to enter a plea of *autrefois acquit* in any such subsequent proceedings, as he was not in jeopardy on the charge in the invalid proceedings: see, *e.g., R.* v. *Marsham, ex p. Pethick Lawrence* [1912] 2 K.B. 362.

When a committal has been so found to be illegal, the accused may be brought afresh before the appropriate examining magistrates, a new set of depositions may be taken, and he could then be committed for trial afresh, this time—it is to be hoped—to the appropriate court. Alternatively, and this procedure would normally be more expeditious and is therefore to be preferred, a written application (supported by an affidavit and a copy of the original depositions) for leave to prefer a fresh bill of indictment at the appropriate assizes or quarter sessions, may be made to a judge of the High Court or a commissioner of assize, under section 2 (2) (*b*) of the Administration of Justice (Miscellaneous Provisions) Act, 1933 [8]; if this leave is granted the accused may then be tried on the fresh bill so preferred.

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[6] Indictments Procedure Rules, 1933, r. 2.

[7] This should be raised at the commencement of the trial, if possible before arraignment, but it seems that such a point may be raised at any stage, and if not discovered until after verdict, it would, of course, be a valid ground for appeal.

It is reasonably clear where the procedure before the magistrates on the taking of the depositions has been incorrect, that, by analogy with *R.* v. *Marsham, ex p. Pethick Lawrence* [1912] 2 K.B. 362 (where a magistrate discovered after he had given sentence that one of the witnesses had not been sworn, and thereupon promptly reheard the case), the magistrates can reopen the case *de novo,* the whole proceedings being a nullity, without waiting for the court of " trial " to quash the indictment. The position is not so clear, however, where the only illegality is that of the committal itself, where for some reason or other, the magistrates have chosen the wrong court of trial. If the defect is discovered before the particular quarter sessions or assizes have opened, can the same magistrates sit again and recommit the accused to the correct court? It is submitted that if they have power to do this, it will not in any event be open for them to take the depositions again, as this part of the proceedings was quite valid.

In *Bannister* v. *Clarke* [1920] 3 K.B. 598, the magistrates had committed an accused person for trial on an offence not triable on indictment. When the error was discovered, the accused was then tried before the magistrates and convicted; on appeal it was argued that the magistrates had exhausted their jurisdiction when they had committed the accused for trial. However, it was held by the Divisional Court that in committing the appellant for trial the justices did not really adjudicate at all, and they did not exhaust their jurisdiction, because they attempted to do what they had no power to do. It would, therefore, seem that magistrates who have committed an accused man to the wrong court are not *functi officio,* provided the particular sessions are not complete, and there seems to be no legal reason why they should not recommit the accused to the correct court. As pointed out in a learned contemporary,[9] however, this would lead to grave practical difficulties. There is no process whereby the attendance of the accused can be compelled at the recommittal proceedings (unless, possibly, he is in custody) and it is not clear how the recognisances of the witnesses and the prosecutor can be amended to provide for attendance and prosecution at the new court of trial. It is suggested, therefore, that section 2 (2) (*b*) of the 1933 Act should be used whenever possible, and it seems that an application can be made thereunder as soon as the defect in the committal is discovered, without awaiting the decision of the original court of trial to quash the indictment.

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[8] For procedure, see the Indictments Procedure Rules, 1933.

[9] *Justice of the Peace Newspaper* for March 26, 1955, at p. 210; see also (1954) 118 J.P.N. 720 and 805.

No clear procedure is laid down, however, for cases where a bill is preferred under section 2 (2) (*b*) of the 1933 Act. The prosecution will presumably notify the accused of the granting of the application and of their intention to prefer a bill; it then seems that if the accused does not appear in answer to the indictment, an application may be made for a bench warrant, which will, presumably not be signed until the end of the assizes or sessions.[10] The attendance of witnesses can be secured by bespeaking subpoenas, either out of the Crown Office of the High Court, or from the clerk of the court before which the indictment is to be tried (Archbold, 33rd ed., § 865).

The status of the original depositions taken before the magistrates at the court by which the accused is eventually tried, is not free from doubt. It would seem that section 13 (3) of the Criminal Justice Act, 1925, cannot apply here, and that the depositions cannot be used in evidence " without further proof," as the accused is not being tried by the court to which he was committed when the depositions were taken. Therefore, if a witness fails to come up to his deposition, the deposition cannot be put to him in the usual way, unless there is evidence *aliunde* (*e.g.*, from a police officer who was present at the court below) that the deposition is in fact a correct record of his earlier evidence. The depositions merely have, it seems, the status of a proof of evidence which is, of course, available to both prosecution and defence. Exhibits also would have to be strictly proved, and a *subpoena duces tecum* may be appropriate in some circumstances, but this may not be served on the accused.

Similar difficulties arise on a private prosecution, the indictment being preferred again under section 2 (2) (*b*), and some of the practical points that arose are discussed in a report of the interesting case of *R.* v. *Harrison* [1954] Crim.L.R. 39.

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[10] Archbold, 33rd ed., § 142, and *R.* v. *Harrison* [1954] Crim.L.R. 39. Note that when a bench warrant is granted, the court will require the prosecutor to enter into a recognisance to proceed against the accused.

Binding Over on Complaint and Otherwise

By A. E. Jones

Magistrates' Clerk

One of the most commonly used powers possessed by justices of the peace is also one of the oldest, namely, that of binding over persons to keep the peace or to be of good behaviour. The "surety of the peace" is authorised by the justices' commission; the surety for good behaviour by 34 Edw. 3, c. 1 (the Justices of the Peace Act, 1361). The first named "surety" is intended to deal with cases of apprehended violence; the second named with persons of evil fame who have shown an intention to break the law of the land (see the remarks of Denning L.J. in *Everett* v. *Ribbands* [1952] 116 J.P. 221 at pp. 223–4). As the use of violence is against the law of the land "good behaviour" must include "keeping the peace" and it would seem, accordingly, that the requirement to be of good behaviour may be made in all cases where binding over is authorised. In practice, the form "to keep the peace and be of good behaviour" is frequently employed, though it is probably tautologous.

"Binding over" is not the term used in the statutes which refer to the power; in strict legal parlance this adjudication is an order or requirement to enter into a recognisance. The recognisance may be with or without sureties. If the order is to be made for keeping the peace or being of good behaviour towards some named person, the procedure laid down in section 91 (1) of the Magistrates' Courts Act, 1952, must be followed and the order will be on the complaint of that person. A summons will be issued and at the hearing the complainant must satisfy the magistrates that there are good grounds for making the desired order. Proceedings of this nature are most commonly met with in summary courts in the form of a summons for threats.

It is sometimes thought that once the court has decided to order a defendant to enter into a recognisance to keep the peace or to be of good behaviour, it suffices to announce the decision and the intended result automatically follows. But, in fact, this is an order which, like many other court orders, may be disobeyed. The position tends to be masked with regard to the recognisance because magistrates do not usually say that a defendant is ordered to enter into a recognisance. Instead they inform him that he is bound over. If they so dealt with a defendant in his absence (as they would have power to do after a summons had been properly served) it would be clear that a further step was required to complete the matter, namely, the attendance of the defendant before some person authorised to take his recognisance. When the defendant is present at the hearing two separate matters, the announcement of the order and the taking of the recognisance, are almost invariably telescoped into the one formula, " You are bound over, etc." ; if the defendant makes no demur it is taken that he accepts the undertaking required of him. But he is entitled to say, " I refuse to be bound over," and this has been known to happen on occasion. He cannot then be said to have entered into his recognisance because its essential feature is an acknowledgment of debt due to the Crown if its conditions are not complied with (see Form 95 in the Magistrates' Courts (Forms) Rules, 1952). By his refusal the defendant will have put himself in the same position as one who fails to find a surety required. He will, in the terms of section 91 (3) of the Magistrates' Courts Act, 1952, be a person " ordered by a magistrates' court under subsection (1) of this section to enter into a recognisance, with or without sureties, to keep the peace or to be of good behaviour " who " fails to comply with the order " ; and " the court may commit him to custody for a period not exceeding six months or until he sooner complies with the order."

" Consent " to binding over

In one sense then, a binding over must always be by consent. But this is not what is signified when a person is spoken of as having been bound over by consent. That expression is reserved for cases where a party agrees to be bound over without a formal hearing of the complaint against him. This kind of binding over by consent is open to objection because it suggests that the person concerned is consenting not to being bound, but to the court's ordering him to be bound. Consent to the making of the order without a hearing would not have offended against the former summary jurisdiction law, but it is not in conformity with section 45 (2) of the Magistrates' Courts Act, 1952. This, giving the procedure to be observed at the hearing of a complaint, reads: " The court, *after hearing the evidence and the parties*, shall make the order for which the complaint is made or dismiss the complaint." Section 45 (3) goes on to enact that where a complaint is for an order for the payment of money or for a variation of an order for periodical payments " or for such other matter as may be prescribed, the court may make the order with the consent of the defendant without hearing evidence."

It is clear from this that nowadays an order on complaint cannot be made by consent unless that course is specifically authorised for the type of proceeding in question. Binding over is not a matter prescribed under the terms of section 45 (3), above. Consequently, when a magistrates' court dealing with a summons for threats gets the defendant's agreement to be bound over without any evidence being called (as is sometimes done), the resulting recognisance is of doubtful validity. It may be argued that the court has not made an order that the recognisance be entered into, but the corollary to that is the proposition that the defendant has decided of his own motion to offer his recognisance and thereby conferred jurisdiction on the court to take it. This would not sound very convincing in the Divisional Court, and it would seem better practice not to bind over without having heard evidence. In former times justices exercising their jurisdiction under the commission of the peace or under 34 Edw. 3, c. 1, always followed this course; as Denning L.J. said in *Everett* v. *Ribbands*, above: " A magistrate could not order a man to find sureties unless just cause was shown on oath."

Cases where there is no complaint

The old procedure for binding over must, of necessity, be followed in cases to which section 91 of the Magistrates' Courts Act, 1952, does not apply, namely, where there is no complaint for an order to keep the peace or to be of good behaviour towards the complainant himself. This raises certain questions of law the answers to which are not so clear and certain as one would expect to find in view of the literally everyday nature of the jurisdiction in question. An analysis of some cases in which a High Court decision has been sought does, however, provide guidance in the main difficulties.

Binding over to keep the peace is frequently imposed either with or without a penalty after the hearing of a prosecution for common assault. The defendant may, in fact, lawfully be bound over even though the charge against him is dismissed if the justices are satisfied that his conduct gives rise to apprehensions of violence (see *Ex p. Davis* (1871) 35 J.P. 551). Sometimes the complainant also is bound over for the same reason after the evidence has been heard. *R.* v. *Wilkins* [1907] 2 K.B. 380 is the authority for this use of the jurisdiction. It was a case where certiorari was asked for to quash the recognisance which the complainant in a summons for threats had been ordered to enter into after the evidence had shown that he himself had used threats. It was argued that the justices had no jurisdiction to make the order against the complainant since no complaint had been made against him under section 25 of the Summary Jurisdiction Act, 1879 (the predecessor of section 91 of the Magistrates' Courts Act, 1952). In giving the judgment of the court, Lord Alverstone C.J. said: "When a person appears before justices, although his appearance is in the capacity of complainant, and facts are proved . . . which would justify them in binding him over to keep the peace, the justices have jurisdiction to make an order to that effect. . . . Justices have a general power under their commission to bind over any person if it appears that that person has been guilty of violent conduct tending to a breach of peace. . . Therefore, the first objection raised to this order appears to me to be without foundation."

It seems clear from this that the High Court did not regard the case as one where a complaint could be deemed to have been made although no summons had been formally issued on it. The order of the justices was upheld because it was justified by powers they possessed apart from those contained in the Summary Jurisdiction Act. A similar distinction was made in *Haylock* v. *Sparke* (1853) 17 J.P. 262, another application for certiorari to quash a binding over ordered by justices. Again the court refused to quash the order, Lord Campbell C.J. saying: "We do not refer to the cases relating to articles of the peace exhibited by a complainant, as these are subject to regulations different from those which prevail in respect of sureties for good behaviour required by a magistrate for the sake of the public. The law upon this subject is founded on the statute 34 Edw. 3, c. 1."

34 Edw. 3, c. 1, and the commission of the peace will have to be relied on then to justify binding over not only for the matters already mentioned, but for eavesdropping when the accused has been arrested by the police, for conduct *contra bonos mores*, such as prostitution and frequenting gaming or betting houses, for the prevention of future offences where the maximum penalty is too small to be a deterrent, or for misbehaviour in the face of the court. In all these cases it is the public and not some individual that the court is intending to protect.

Refusal to enter into recognisances

How are magistrates to deal with a refusal to enter into a recognisance ordered in such circumstances or with a failure to find a surety required by it? They cannot have recourse to section 91 (3) of the Magistrates' Courts Act, 1952, because that covers only recognisances ordered under section 91 (1). They cannot treat the matter, either, as disobedience of an order within the terms of section 54 of the Act of 1952 because that section is restricted to orders "made under an Act passed after the 31st December, 1879."

In fact, there appears to be no statute which authorises magistrates to commit to prison a person who is in default under an order to enter into a recognisance to keep the peace or be of good behaviour in circumstances not covered by section 91 (*supra*). The old commission of the peace in a passage dealing with this matter commanded justices: "if they shall refuse to find such security then them in our prisons until they shall find such security to cause to be safely kept." But the statute 34 Edw. 3, c. 1, contains no provision for imprisonment in default of compliance with the orders it authorised. Old cases and textbooks show, however, that the power of magistrates to commit to custody for such non-compliance was always recognised; in *Ex p. Aston* (1844) 13 L.J.M.C. 52, for example, it was held that the house of correction could be used for this purpose.

One expects to find statutory authority for any exercise of summary jurisdiction, but this appears to be a rare example of a common law power of justices. A statutory recognition of the power is, however, to be found in section 3 of the Criminal Procedure Act, 1853. This restricted to twelve months the imprisonment which might be ordered by justices for default in entering into a recognisance or finding a surety to keep the peace or be of good behaviour. Burn's *Justice of the Peace,* giving instances from an era prior to this, mentions one case where two years was the term fixed by justices for a default of this kind. A similar term had been fixed in *Willes* v. *Bridger* (1819) 2 B. & Ald. 278, and the decision of the justices was affirmed. Section 3 of the Act of 1853 was repealed by the Statute Law Revision Act, 1892, but it is unlikely that a modern Queen's Bench Division would regard magistrates' powers in this matter as being now entirely at large. It would be sound judicial discretion not to exceed the six months' maximum fixed by the Magistrates' Courts Act, 1952, even in those cases where strictly it does not apply. If the recognisance were ordered by one justice sitting alone the restriction contained in section 98 (5) of that Act would apply and fourteen days would be the maximum imprisonment which could be awarded for a non-compliance with the order.

Procedure

Under the old procedure justices commonly heard *ex parte* an application for the surety of the peace or to be of good behaviour; if satisfied of its credibility they issued a warrant to bring the person named before them to enter into the recognisance they had fixed. When brought before them he had no right to call evidence to disprove the allegations against him. The correctness of this procedure was affirmed as late as 1876 in *Lort* v. *Hutton* (1876) 45 L.J.M.C. 95, on the ground that no punishment but only a preventive measure was involved. It seems very doubtful, however, whether it would be approved of by a twentieth-century Divisional Court. In all modern cases where a recognisance to be of good behaviour or to keep the peace has been under consideration by judges of the High Court no attempt had been made by the magistrates concerned to deal *ex parte* with the matter, but a summons had been issued on each case and the defendant had been permitted to make a full defence to it. In fact, the proceedings had invariably been conducted as if brought under section 25 of the Summary Jurisdiction Act, 1879, and this would seem to be the wise line to follow. It is probable, nevertheless, that the old power to issue a warrant instead of a summons might still be recognised by the superior courts if discreetly used, although in respect of a complaint under section 91 of the Magistrates' Courts Act, 1952, this could not be done.

Once the adjudication has been completed the law relating to it appears to be the same whether it was founded on the commission of the peace, 34 Edw. 3, c. 1, or section 91 of the 1952 Act. Sections 92, 94, 95 and 96 of the latter Act, dealing respectively with the discharge of a recognisance on complaint of a surety, the variation of requirements as to sureties, the taking of recognisances out of court and separately in the case of principal and sureties, and the forfeiture of recognisances, all relate in terms to any recognisance to keep the peace or to be of good behaviour. Finally, there is no general right of appeal to quarter sessions either against the order to enter into any such recognisance or against its forfeiture—a fact which makes it all the more important that magistrates should exercise this jurisdiction with great discretion and a strict observance of its limits.

Advocacy at Petty Sessions

By B. Fraser Harrison, *Solicitor*

(*Continued from p.* 429)

Appeal

Right of appeal

Whenever an accused is convicted it is wise for his solicitor to tell him of his right to appeal and the time in which he must enter it; but he should also be advised whether he has any chance of success if he does appeal.

There are two appellate courts from a court of summary jurisdiction in criminal matters; the High Court by way of case stated or quarter sessions by notice.

Case stated

Section 87 (1) of the Magistrates' Courts Act, 1952, provides:

> " Any person who was a party to any proceeding before a magistrates' court or is aggrieved by the conviction, order, determination or other proceeding of the court may question the proceeding on the ground that it is wrong in law or is in excess of jurisdiction by applying to the justices composing the court to state a case for the opinion of the High Court on the question of law or jurisdiction involved."

This section does not apply to decisions of the justices against which the aggrieved person has a right of appeal to the High Court; that is, in particular, a matrimonial dispute, where the appeal lies to the Probate, Divorce and Admiralty Division of the High Court; or to a decision which by virtue of any enactment passed after December 31, 1897, is final.

An application for the magistrates to state a case under section 87 *must be made within fourteen days after the day on which the decision of the magistrates' court was given.* This day is the day on which the court sentenced or otherwise dealt with the accused.

When an application is made to the magistrates to state a case under this section any right of appeal to quarter sessions ceases: in other words, an accused may not have two bites at the cherry, he must make up his mind which alternative remedy he will seek.

Should the magistrates think that the application is frivolous they may refuse to state a case, but if the applicant insists they are bound to give him a certificate stating that his application has been refused; the applicant may then apply to the High Court for an order of mandamus requiring the magistrates to state a case despite their previous refusal.

On an appeal to the High Court by way of case stated the decision of the High Court may be enforced as if it were a decision of the magistrates' court from which the appeal was brought.

Practice on an appeal by way of case stated

Either side may ask the magistrates to state a case, and once the accused or prosecutor has decided to appeal against the decision of the magistrates' court an application for the magistrates to state a case is signed by the applicant and delivered by registered post or by hand to the clerk to the justices against whose decision the appeal is made; it is courteous to serve a copy on the other side. It is unnecessary to provide a copy for each magistrate who sat.

It is always wise to have the application for an appeal or the withdrawal of an appeal signed by the client so that it cannot afterwards be said that it was done without his knowledge.

The solicitor then asks the magistrates' clerk for a copy of the notes he made during the summary trial. The clerk is not under an obligation to provide either side with a copy of his notes, but many clerks are willing to do so. The clerk's notes, if provided, and those of the solicitor himself are included in the instructions to counsel who usually settles the draft case to be stated.

At any trial it is always useful to take notes as fully as possible of the evidence and the magistrates' findings. Although a note cannot be made of one's own cross-examination it is wise to write down a really vital reply even then.

When counsel has settled the draft case a copy is sent to the prosecutor for him to agree or amend and the final agreed draft case is sent to the clerk to the justices. If agreement cannot be reached both drafts are delivered to the clerk.

Finally, the magistrates who heard the case, or any two of them, settle the case to be stated. It is usual for them to follow the agreed draft, or as much of it as is acceptable to both sides, but there is no rule of law which says they must do so.

The magistrates are required to state the case within three months of the application for them to do so; if they do not it is the appellant's duty to apply for an extension of time even if the delay is due to the magistrates or the respondent.

Recognisances

By section 90 of the Magistrates' Courts Act, 1952, the magistrates are not required to state a case until the applicant has entered into a recognisance, with or without sureties, before the magistrates' court, that he will (a) prosecute the appeal without delay, (b) submit to the judgment of the High Court and pay such costs as that court may award; the magistrates' clerk is not required to deliver the case to the applicant until the latter has paid the fees due for the case and the recognisances. These should be entered into as soon as possible in case the three months expire and the right to appeal is lost. Some clerks are prepared to allow the solicitor for the applicant to see the magistrates' case before the recognisances are entered into, but this should not be relied upon.

The recognisances have to be entered into by the applicant in person, and it is usual to arrange a convenient day on which to do so with the magistrates' clerk.

Lodging the case

When the magistrates have stated the case the applicant's solicitor must lodge it at the Crown Office and Associates' Department of the Supreme Court within ten days after receiving it. Within fourteen days after receiving the case from the magistrates he must serve notice in writing of the appeal, together with a copy of the case, on the respondent. There must be at least eight clear days between the service of the notice and the day named therein for the hearing. (Rules of the Supreme Court, Ord. 59, r. 33.) In fact, the date of hearing will be notified to the parties by the court: London agents should be told of the appeal, so they can watch the lists.

It cannot be overstressed that these steps must be taken within the prescribed periods.

When the High Court hears the appeal, counsel for either side may appear and argue the case, but the argument and the decision are based on the case as stated. No further evidence is called.

The great advantage on an appeal by way of case stated is that the evidence given before the magistrates cannot be amplified; if the prosecutor has failed to identify the wrongdoer as being the accused he cannot remedy this defect by calling another witness as he may on an appeal to quarter sessions.

Appeal to quarter sessions in criminal matters

An appeal to quarter sessions is regulated by section 84 of the Magistrates' Courts Act, 1952, and, unlike an appeal to the High

Court by way of case stated, may be made only by the person convicted.

The hearing of the appeal takes the form of a new trial; the witnesses give their evidence afresh; witnesses who did not appear before the magistrates may be called, and in all respects the recorder or chairman and magistrates, who sit without a jury, try the appeal as though the accused were before the court for the first time on this charge.

If the accused pleaded guilty before the lower court, he may appeal to quarter sessions against sentence, but not against conviction; if he pleaded not guilty or failed to appear, he may appeal against conviction or sentence. Sentence is defined by section 83 (2), (3) of the Act of 1952 and does not include a probation order, an order for conditional discharge or an order for the payment of costs.

Practice on an appeal to quarter sessions

Rules 58, 59 and 60 of the Magistrates' Courts Rules, 1952, are the ones which refer to this subject.

An appeal to quarter sessions is commenced by notice, signed by the appellant or on his behalf, a copy of which is served on the clerk to the magistrates against whose decision the appeal is being made, and upon the prosecutor by hand or by registered post. *The notice must be served within fourteen days after the day on which the decision appealed against was given.* The form of the notice contains the date and place of conviction, the offence(s) of which the accused was convicted and the general grounds of appeal. It is unnecessary to elaborate these grounds, and the words: "The conviction was against the weight of the evidence and I am not guilty of the offence" are sufficient for an appeal against conviction; and the words: "My sentence was too severe" are equally adequate if the sentence is also or alone the subject of the appeal.

Nothing further has to be done until next quarter sessions when the appeal is heard, except that if the appellant has been sentenced to imprisonment application should be made for bail.

Some sessions give no notice of the date of hearing of the appeal. This is so in large cities, where it is the responsibility of the solicitor to watch the daily court list to discover the day on which he has to have his client in court. In practice, once the brief has been delivered, counsel's clerk will watch the list and inform the solicitor. No matter who conducted the defence in the lower court, a barrister has to appear at the appeal, except at a very few sessions. In the counties, where Appeals Committees sit on the hearing of appeals, notice is sent to the solicitor if his name appears on the notice of appeal of the date of hearing by the clerk of the peace, and the solicitor should give the barrister's clerk as much warning as he can.

If a solicitor does not know which particular procedure is adopted the barrister's clerk will guide him.

Notices of appeal to quarter sessions given out of time

Although the correct period in which a notice of appeal to quarter sessions should be given is fourteen days after the day on which the magistrates gave their decision, section 84 (3) of the Magistrates' Courts Act, 1952, gives the recorder or chairman of quarter sessions power, *if he thinks fit*, to treat a notice already given, but given after the expiry of the fourteen days, or a notice given within such further time as is specified in the direction of the recorder or chairman, as being given within the prescribed fourteen days.

The appellant is not entitled to this privilege as of right, and the recorder or chairman will have to be given cogent reasons why the notice of appeal was late before he will make a direction in favour of the appellant.

If it is necessary to seek this exemption from the fourteen days' rule, an application for the direction is made by the appellant in writing to the clerk of the peace; the clerk sends it to the recorder or chairman, who, if he thinks it proper to do so, sends his direction back to the clerk. The clerk of the peace informs the appellant and the clerk to the justices by notice. The appellant, again by notice, informs the other side and the appeal is then heard in the normal manner.

No personal application is made to the recorder or chairman, who considers the written application in his home or chambers, so a great deal depends upon the wording of the application; an inexperienced solicitor would be wise to instruct counsel to settle it.

The waiting period on an appeal to quarter sessions

The task of a solicitor during the interim between the summary trial and the hearing of the appeal by quarter sessions is similar to that which he would have while awaiting the trial by a jury after a committal.

It is useful to counsel if he is supplied with a typewritten copy of the solicitor's rough notes made during the trial before the magistrates. These may be amplified in the brief, but counsel will wish to know the exact words the witnesses used, so it is useful to let him have an exact copy of the notes.

The appellant and his witnesses are again taken through their proofs; this time with the knowledge of what the prosecutor has proved and the witnesses have themselves stated on oath.

This is not done to inveigle the appellant or his witnesses to alter their testimony: to do so would be both wrong and foolish; the prosecutor will have taken notes of what was said in the lower court and be quick to question a witness on any change in his evidence. The purpose of these interviews is to ask the witnesses who gave evidence at variance with their original proofs why they did so, and what had they recollected to make them change; to discover whether the witnesses have thought of anything that would disprove the evidence advanced by the prosecutor, and to go into the facts that at the outset appeared trivial, but have since been shown to be important. Lastly, the witnesses are seen to ensure that they are prepared again to attend court. They have already lost one day's pay, and have had the unpleasant experience of being cross-examined; they may not feel willing to be subjected to it again. One way of discovering whether they will refuse is to ask them to attend at the solicitor's office; if they will not do that then it will obviously be necessary to subpoena them.

Abandonment of an appeal to quarter sessions

Quarter sessions may not only decrease a sentence: it may also increase it; and although a client may be wildly anxious to appeal immediately after his summary trial, with the passage of time he may have thought again. Also, he may have been optimistic about his ability to meet the cost of an appeal. If this be so, and he has thought again about the advisability of an appeal, he has the opportunity of withdrawing.

Section 85 of the Magistrates' Courts Act, 1952, permits an appellant, who has given notice of appeal to quarter sessions and has changed his mind, to abandon his appeal. He does this by giving notice of the abandonment in writing to the clerk of the court against whose decision he had intended to appeal not later than the third day before the day fixed for the hearing of the appeal.

Some quarter sessions nominate the actual day upon which the appeal will be heard, but in the larger centres the appeals may be heard at any time during the sessions; in this case the day "fixed for the hearing of the appeal" is the day on which the quarter sessions commences, and the notice of abandonment must be given not later than the third day before that day.

Once a notice of abandonment has been given the magistrates' court may issue process for enforcing its decision, and any recognisance into which the appellant entered to appear at the appeal has effect as though it were conditioned for the appellant to appear before the magistrates' court at the time and place the appellant is told by the magistrates' clerk.

The appellant may also be ordered to pay the costs of the other side incurred before the notice of abandonment.

(To be continued)

Practice and Procedure

Quarter Sessions

Quashing an indictment

It was reported at [1955] Crim.L.R. 371, that Surrey Quarter Sessions quashed an indictment on the ground that there had been no proper committal. It was stated that the accused on his first appearance in a magistrates' court consented to summary trial and pleaded not guilty. The trial was adjourned and when he appeared before a differently constituted bench he elected to go for trial. The indictment was quashed because it was held that having consented to summary trial, the accused could not subsequently change his mind, as section 24 of the Magistrates' Courts Act, 1952, provided that a magistrates' court " having begun to try an information for any indictable offence summarily, shall not thereafter proceed to inquire into the information as examining justices." It was held, the report states, that taking a plea after election for summary trial is a step in that trial and that that determined the matter. With respect, it is submitted that this is a faulty argument in the form in which it is applied to the facts of this case.

Section 19 of the Magistrates' Courts Act, 1952, is by subsection (1) applied where a person appears before a Magistrates' Court on an information charging him with an indictable offence that is triable summarily. Subsection (3) requires the court, *i.e., the court before which he appears,* to inform him of his rights relating to summary trial or trial on indictment. Now, the argument seems to have been adopted that if he comes up before a different Bench on a subsequent occasion his original consent to summary trial and plea of not guilty binds him by virtue of section 24. It is submitted that that cannot be the case. The adjourned hearing is not a continuation of a trial. It is a case of a trial being recommenced and (following section 19 (1) and (3)) the court before which he appears has to state his rights anew. There has been up to that point no trial, no effective hearing; everything starts *ab initio* and the accused must again be asked if he consents to summary trial. If he does not the court has no option but to take depositions and commit him for trial.

It is agreed that the taking of a plea after consent to summary trial is a step in that trial, but only in *that* trial. If the defendant appeared before the same bench on an adjourned hearing he could not change his mind because section 24 prohibits it. But where he appears before a different bench the trial is not *that* trial; it is a new one and he has another opportunity to make his election.

The argument also fails on an examination of section 24 itself. That refers to a magistrates' court which has begun to try an indictable offence summarily. In the case in point, while the first court had so begun, the second court had not started, and further section 98 (6) of the Magistrates' Courts Act requires that " the justices composing the court before which any proceedings take place shall be present during the whole of the proceedings." The important word in this connection is " whole." [A. J. C.]

Mr. G. S. Wilkinson, Clerk to the Magistrates, Dudley, has written making the same point and concludes:—

" On the question generally of consent to summary trial under the Magistrates' Courts Act, 1952, s. 19, I see that in the form of caution in *Stone,* 87th ed., p. 2547, reference is made to the accused consenting to be ' tried by this court.' If a defendant finds himself before a bench of magistrates consisting of Smith, Brown and Robinson, he may consent to be tried by them but, after he has consented, the case might be adjourned and he would find himself before Jones, Davies and Evans, to whom he strongly objects as magistrates. I may be very pedantic but, in order to avoid the defendant claiming that he never consented to be tried by the latter court, I always address a defendant by asking if he consents to be ' tried by a magistrates' court, that is, by these or some other magistrates.' "

Case and Comment

The reports of cases to which initials are appended hereunder have been specially prepared for *The Criminal Law Review* by the following reporters:—

HENRY PALMER, *Barrister-at-Law.*
J. D. PENNINGTON, *Barrister-at-Law.*

Armed Forces—*Larceny—charge.* See R. *v.* BRYANT, p. 505, below.

Betting—*Bookmaker—exclusion from race-track*

R. *v.* GREYHOUND RACING ASSOCIATION[1] (Court of Criminal Appeal: Lord Goddard C.J., Devlin and Donovan JJ.: June 20, 1955).

The G. R. Association was convicted at Middlesex Sessions of excluding a bookmaker from a race-track contrary to section 11 of the Betting and Lotteries Act, 1934, and were fined. At Harringay dog racing track there were three enclosures known as the Big Ring, the Middle Ring and the Small Ring. At the material time the G. R. Association allowed only three bookmakers to operate in the Big Ring. On the day in question G., a bookmaker (the prosecutor) presented himself for admission to the Big Ring and was refused on the ground that enough bookmakers were there already for the business which was available. At no time was G. refused admission to the Small Ring, but he contended that his prestige and goodwill would suffer if he descended to making a book in the Small Ring, and that exclusion from the Big Ring was virtually exclusion from the track. At the trial, the G. R. Association was found guilty by the jury under both paragraphs (*a*) and (*b*) of section 11 (2), and now appealed to the Court of Criminal Appeal against conviction on the ground of misdirection and non-direction in law:—

Held, allowing the appeal, that, on the evidence, there was nothing which could justify the finding that G. was excluded from the track. He was expressly told that he could make a book in the Small Ring, and G.'s contention that exclusion from the Big Ring was virtually exclusion from the track, having regard to his standing as a bookmaker, had to be rejected on the ground that a personal matter of that sort was not the responsibility of the G. R. Association. Secondly, on the evidence, G. was not excluded from the Big Ring solely on the ground that he was a bookmaker; the reason given was that there were enough bookmakers in the Big Ring for the business available. Thirdly, the subsection does not give any particular bookmaker the right to make his book in a particular place provided there is room there; the number of bookmakers required to accommodate the public is simply a matter of management, and Parliament has not intruded into that matter. The learned Deputy Recorder misdirected both himself and the jury on these questions and the appeal would, therefore, be allowed. [H. P.]

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[1] For the appellant: *Gilbert Paull Q.C., Mervyn Griffith-Jones* (instructed by Herbert Smith & Co.). For the prosecutor: *J. F. F. Platts-Mills, Gavin Freeman* (instructed by Gouldens).

COMMENTARY. The Betting and Lotteries Act, 1934, s. 11 (2) provides: " The occupier of a licensed track— (a) shall not, so long as a totalisator is being lawfully operated on the track, exclude any person from the track by reason only that he proposes to carry on bookmaking on the track; and (b) shall take such steps as are necessary to secure that, so long as a totalisator is being lawfully operated on the track, there is available for bookmakers space on the track where they can conveniently carry on bookmaking in connection with dog races run on the track on that day."

See Archbold, 33rd ed., 1423; Stone, 87th ed., 1047.

Carnal knowledge of mental defective—*Girl placed out on licence —effect of disobedience to term of licence*

R. *v*. BALDERSTONE [2] (Court of Criminal Appeal: Hilbery, Gorman and Havers JJ.: May 26, 1955).

B. was convicted under section 56 of the Mental Deficiency Act, 1913, of having had carnal knowledge of a girl who was a certified mental defective. At the time when the intercourse took place the girl was placed out on licence, but she had run away from the people with whom she had been placed and had for a short time lived together with B. as his wife. B. appealed against his conviction on the ground that, at the time when the intercourse took place, the girl was not a mental defective within section 56 of the Act, by reason of her disobedience to a term of the licence:—

Held, dismissing the appeal, that a licence under the Mental Deficiency Act, 1913, is not revoked by the disobedience of the mental defective to a term of the licence. The defective does not subscribe to the terms of the licence; it is a licence to the person with whom the defective is placed. Section 56 of the Act was intended for the protection of persons in this girl's position. [H. P.]

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[2] For the appellant: *J. G. Marriage* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *C. G. L. Du Cann* (instructed by the Director of Public Prosecutions).

COMMENTARY. See Archbold, 33rd ed., 1110; Stone, 87th ed., 1542.

Demanding money with menaces—*Form of demand—direction to jury*

R. *v*. COLLISTER AND WARHURST[3] (Court of Criminal Appeal: Hilbery, Gorman and Havers JJ.: May 26, 1955).

C. and W., who were police officers at the time of the offence, were convicted of demanding money with menaces from J. and were each sentenced to two years' imprisonment. The evidence of J. was, very shortly, that on the evening of February 8, 1955, he was approached by C. in Piccadilly. C. told him that he was on leave from the Merchant Navy and said that he was broke, whereupon J. suggested that C. should come back to his hotel where a night's lodging might be arranged. When they had walked as far as Golden Square, C. produced a police warrant and said: "I am going to arrest you on a charge of importuning." After some conversation they met W., and C. said to J.: "This is my sergeant," and then said to W.: "This man invited me to come to his hotel. I am quite satisfied that he is importuning." After protest by J., W. said to him: "This is going to look very bad for you." J. gained the impression very strongly that they were after money, but as he had little or nothing on him, he suggested meeting the following night. C. and W. suggested Chancery Lane tube station at 7 o'clock. W. told C. to type out a report on the matter, but to hold it up and only to use it if J. failed to keep the appointment the following evening. J. went to the police and, acting on their instructions, kept the appointment. At that meeting J. handed over £5 in one pound notes, and C. and W. were arrested. The evidence given by C. and W. at the trial was that J. in fact importuned them, but the jury rejected that evidence. C. and W. appealed to the Court of Criminal Appeal on the grounds (i) that the judge misdirected the jury, and (ii) that J. was put before the jury as a witness of good character, whereas he had in fact had one conviction for larceny (for which he was bound over to be of good behaviour) and was a bankrupt who, in the course of the public examination, admitted to the Official Receiver that he had on occasions told lies in order to obtain loans of money:—

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[3] For the appellants: *J. F. F. Platts-Mills* (instructed by Beach & Beach). For the Crown: *Christmas Humphreys, J. Southworth* (instructed by the Director of Public Prosecutions).

Held, dismissing the appeal, that there need not be an actual substantive demand either express or by an unequivocal gesture. The trial judge was right in directing the jury that: " You need not be satisfied that any express demand or threat was made, but if the evidence satisfies you that . . . an ordinary reasonable man would understand that a demand for money was being made upon him and the demand was accompanied by menaces . . . then you would be justified in coming to the conclusion that a demand with menaces had been made. . . ." As regards point (ii) it was the duty of the prosecution to inform the defence of any known convictions against the prosecutor in the case, and the court accepted from counsel for the prosecution that the defence was so informed in this case. Finally, it was impossible to say that the jury would necessarily have come to a different conclusion if the material from the bankruptcy file had been put to J. in cross-examination. There was abundant evidence upon which the jury could find C. and W. guilty of the offence. [H. P.]

COMMENTARY. See Archbold, 33rd ed., 692, 696; Stone, 87th ed., 1489–1490.

Evidence—*Corroboration—rape*. See R. *v*. HUGHES, p. 508, below.

Evidence—*Witness—character*. See R. *v*. COLLISTER AND WARHURST, p. 500, above.

False Pretences—*Statement of existing fact—promise as to future conduct*

R. *v*. DENT [4] (Court of Criminal Appeal: Lord Goddard C.J., Devlin and Donovan JJ.: June 20, July 4, 1955) ([1955] 3 W.L.R. 297; [1955] 2 All E.R. 806).

D. was convicted on seven counts of an indictment charging him with obtaining cheques by false pretences. The false pretence alleged in each count was the same and in the following terms: " by falsely pretending that he, on behalf of C. Dent & Sons, was then bona fide entering into a contract for the destruction of moles on land in the occupation of L. for a period of twelve months and that he and the said C. Dent & Sons then bona fide intended to carry out their obligations under the said contract, and that he and the said C. Dent & Sons then bona fide believed that they were and would be able and willing to carry out their said obligations." D. carried on business as a pest destroyer and contracted with farmers to destroy vermin on their land. He asked for and received a payment in advance, but no work was in fact done. The prosecution contended that the statement of present intention, although it related to the future, was a statement of existing fact sufficient to support a charge of false pretences. D. appealed to the Court of Criminal Appeal against his convictions on the ground that his statements were promises merely and not "statements of existing fact": —

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[4] For the appellant: *G. D. Lane* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *J. M. G. Griffith-Jones* (instructed by the Director of Public Prosecutions).

Held, allowing the appeal, that dishonesty *per se* was not a criminal offence; and a statement of intention about future conduct, whether or not it was a statement of existing fact, was not such a statement as would amount to a false pretence in criminal law. A promise as to future conduct not intended to be kept is not by itself a false pretence. If a false pretence as to an existing fact can be proved in addition to a false promise, the conviction can be sustained; for example, if the prisoner expressly or impliedly falsely pretends that he is carrying on an existing business. In the present case, D. was carrying on a genuine business as a pest destroyer; all that was put against him was that he did not intend to do the work he had contracted to do. The promise as to future conduct was implied from his entry into a contract. That promise was not a "statement of existing fact," and, whatever the position might be in civil cases, the rule was so well settled in criminal law that it ought not now to be departed from. [H. P.]

COMMENTARY. See Archbold, 33rd ed., 712, 722.

Food and Drugs—*Description—food not of substance demanded*

MERTON AND MORDEN URBAN DISTRICT COUNCIL *v.* MELLORS [5] (Wimbledon Magistrates' Court: G. A. Shrive, Esq., Chairman: June 3, 1955).

The defendant company was charged with selling to the prejudice of a purchaser food, namely, "garden mint in vinegar," which was not of the substance demanded by the purchaser, in that it contained a grossly excessive proportion of stalk, the quantity of stalk being equal to the quantity of leaf. The public analyst for the prosecution gave evidence that in his opinion the proportion of stalk should not exceed 10 per cent. An analyst called for the defence stated that his analysis of the sample showed the proportion of stalk as 33⅓ per cent. and that he did not agree with the opinion of the analyst for the prosecution. He agreed the 10 per cent. proportion would be a reasonable one for "dried mint" preparation, but not for "fresh garden mint." Evidence was given that in the preparation of "fresh garden mint" it was impracticable to separate the leaf from the stalk. This was the first prosecution in this country in connection with "fresh garden mint in vinegar."

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[5] For the prosecution: Geoffrey Croasdell, Deputy Clerk for Merton and Morden Urban District Council. For the defendants: *Mervyn Griffith-Jones* (instructed by Speechly, Mumford & Craig).

Held, the defendant company was not guilty and the informations were dismissed.

[Leslie A. Owen, *Clerk to the Justices*.]

Food and Drugs—*Misleading advertisement—grapefruit*

SEARS *v.* A. J. LYTLE (ADVERTISING)[6] (Chippenham Magistrates' Court: E. G. Harding, Esq., Chairman: June 9, 1955).

The defendants, a firm of advertising agents, were charged with being party to the publication of an advertisement calculated to mislead as to the nutritional value of certain grapefruit contrary to regulation 1 (2) of the Defence (Sale of Food) Regulations, 1943. At the hearing it was stated that an advertisement appeared in the "Woman" periodical advertising Jaffa grapefruit and stating "that Jaffa Grapefruit are rich in protective Vitamin A that wards off colds, 'flu and other winter ills." Samples of grapefruit were purchased by the prosecutor at Chippenham and sent to the public analyst, who certified that the total Vitamin A activity was 0.004 International Unit per gram. The analyst also certified that on such an analysis one grapefruit of average size would supply approximately 1/340th of the minimum daily requirement of Vitamin A and that, therefore, he was of the opinion that the statement "rich in Vitamin A" was false and misleading. The analyst further certified that in his opinion a claim that a foodstuff is rich in Vitamin A should only be made when the amount of foodstuff that would ordinarily be consumed in one day contains one-half of the daily requirement of 3,000 International Units of Vitamin A. It was pointed out that to reach this requirement it would apparently be necessary to eat about 170 grapefruit each day.

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[6] For the prosecution: C. J. E. Sears, Chief Inspector of Weights and Measures, Wiltshire. For the defendants: D. E. Awdry, Solicitor, Chippenham.

Held, the defendants were guilty; they were fined £10.

[S. W. H. Dann, *Clerk to the Justices.*]

Indictment—*Indictment founded on matters disclosed in consequence of compulsory process of law*

R. *v.* MAYWHORT[7] (Chester Assizes: Sellers J.: June 7, 1955) ([1955] 1 W.L.R. 848; [1955] 2 All E.R. 752).

The accused was the executor and trustee of his deceased mother's estate. As a result of proceedings instituted in the Chancery Division by his brother, a beneficiary under the mother's will, an order was made requiring him to lodge certain accounts and a statement of outstanding or undisposed of property. On failure to comply therewith he was adjudged in contempt of court and a writ of attachment was issued against him. With the object of securing his release from prison, the accused swore an affidavit in which he confessed to converting certain assets of the estate to his own use. This was the first disclosure of the defalcations on which the indictment, containing three counts of fraudulent conversion, was framed. Before the accused's plea was taken counsel for the accused moved to quash the indictment under the provisions of section 43 (2) of the Larceny Act, 1916.

Held, (1) that should the application to quash the indictment be successful, the court would have no jurisdiction to try the offences alleged in the indictment, and therefore it was appropriate to consider the application before taking the plea; (2) that on the facts, as revealed in the depositions, the offences were first disclosed on oath in consequence of a compulsory process bona fide instituted by a person aggrieved and accordingly section 43 (2) applied. The accused was discharged.

[Alan J. Lees, *Barrister-at-Law.*]

COMMENTARY: The Larceny Act, 1916, s. 43 (2), provides: "No person shall be liable to be convicted of any offence against sections 6, 7 (1), 20, 21 and 22 of this Act upon any evidence whatever in respect of any act done by him, if at any time previously to his being charged with such offence he has first disclosed such an act on oath, in consequence of any compulsory process of any court of law or equity in any action, suit, or proceeding which has been bona fide instituted by any person aggrieved."

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[7] For the prosecution: *G. G. Lind-Smith* (instructed by the Director of Public Prosecutions). For the accused: *Robin David* (instructed by H. P. and H. C. Rigby, Sandbach).

In his judgment Sellers J. distinguished two cases, *R.* v. *Noel* [1914] 3 K.B. 848, and *R.* v. *Tuttle* (1929) 21 Cr.App.R. 85, from the present case. In the first a trustee who voluntarily gave evidence in a civil action upon which an indictment was later founded was held not to have disclosed his acts in consequence of any compulsory process of a court of law, and was liable to be convicted. In the second case it was held that a disclosure in an affidavit made in answer to an originating summons in the Chancery Division was not a disclosure in consequence of any compulsory process of a court of law.

Larceny—*Simple larceny*. See R. *v*. BRYANT, below.

Larceny—*Soldier stealing military property—charge*

R. *v*. BRYANT [8] (Courts-Martial Appeal Court: Lord Goddard C.J., Hallett and Byrne JJ.: May 9, 1955) ([1955] 1 W.L.R. 715; [1955] 2 All E.R. 406).

B. was convicted before a court-martial sitting in the Canal Zone, Egypt, of stealing two Egyptian pounds, the property of the president of the regimental institute of No. 1 Cold Storage Depot, R.A.S.C. He was charged under section 41 of the Army Act with committing the civil offence of larceny, "contrary to section 2 of the Larceny Act, 1916." He was sentenced to reduction to the ranks. On appeal to the Courts-Martial Appeal Court, it was argued on behalf of B. that he could not be charged under section 2 of the Larceny Act, 1916, because section 2 states: "Stealing for which no special punishment is provided under this or any other Act for the time being in force shall be simple larceny and a felony punishable with imprisonment for any term not exceeding five years." A special punishment is provided for the offence of stealing military property under section 18 of the Army Act and, thus, it was argued, B. was not charged under the right section.

Held, dismissing the appeal, that it would have been desirable for the accused to have been charged under section 18 of the Army Act, but larceny is a common law offence and section 2 of the Larceny Act, 1916, is solely concerned with the punishment of the offence. Thus, the words "contrary to section 2 of the Larceny Act, 1916," which were contained in the charge sheet, were surplusage. In the case of a soldier who steals military property, the maximum penalty is that laid down by section 18 of the Army Act, namely two years' imprisonment; and he may be charged either under section 18 of the Army Act or under the common law under the provisions of section 41 of the Army Act. It is desirable to lay the charge under section 18, but if the charge is laid under the common law, any words relating to section 2 of the Larceny Act, 1916, should be omitted. [H. P.]

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[8] For the appellant: *W. P. Grieve* (instructed by the Registrar, Courts-Martial Appeal Court). For the Army Council: *E. Garth Moore* (instructed by the Director of Army Legal Services).

Manslaughter—*Burden of proof—direction to jury.* See R. *v.* MURTAGH AND KENNEDY, below.

Merchandise Marks—*False trade description—"sponge"*

R. *v.* DECLON SPONGES [9] (Court of Criminal Appeal: Lord Goddard C.J., Devlin and Donovan JJ.: July 4, 1955) (*The Times,* July 5, 1955).

D. S. Co. were found guilty by a jury at quarter sessions of applying a false trade description and fined £20 and costs. The object in respect of which the company was prosecuted was a synthetic sponge described on the cover as a "Toilet Sponge." The case for the company was that the word "sponge" did not mean only "sea sponge" but included also synthetic sponges. Evidence was given at the trial by the Quain Professor of English language, two retail chemists and four housewives, all of whom said that the object was a "sponge." The company appealed to the Court of Criminal Appeal against conviction:—

Held, dismissing the appeal, that it was for the jury, representing the public, to say whether it was a proper trade description to call the object a sponge. The court were of opinion that it was an idle appeal. [H. P.]

Murder—*Burden of proof—direction to jury*

R. *v.* MURTAGH AND KENNEDY [10] (Court of Criminal Appeal: Hilbery, Streatfeild, Devlin, Gorman and Havers JJ: June 7, 1955) (*The Times,* May 17, 18, 24, 25, and June 8, 1955).

M. and K. were tried at Manchester Assizes on a charge of murder (see [1955] Crim.L.R. 315). M. was found guilty of murder and sentenced to death; K. was found guilty of manslaughter and sentenced to seven years' imprisonment. The charge arose out of an incident in Phillips Street, Manchester, when a motor-car driven by M., and in which K. was a passenger, mounted the pavement and came into collision with J., inflicting fatal injuries on him. It was contended by the prosecution that the car had been deliberately driven on to the pavement as a result of some trouble which had taken place earlier that night, when J. had thrown an iron coal-cellar lid at the motor-car; the police had been informed of this incident by M. and K. and two officers were, in fact, on the way to Phillips Street. It was contended by M. and K. that they drove back to Phillips Street in order to obtain the necessary particulars for a summons; that as they came round the corner they saw J. pick up the iron coal-cellar lid for the purpose of throwing it again; that they both ducked and that the resulting swerve of the car on to the pavement was purely accidental. M. and K. appealed to the Court of Criminal Appeal against their convictions on the ground that the direction to the jury by the learned judge was not a clear and unambiguous direction on the question of onus of proof. It was argued that, in particular, the direction: " If you find that it is not safe to reject the account of these two men that this was a pure accident, acquit them both," and, in another passage: " If you do not think it is safe to reject the explanation of this accident, acquit them both," was not an adequate direction on the burden of proof.

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[9] For the appellant: *Neville Faulks* (instructed by J. N. Nabarro & Sons). For the prosecutor: *Michael Eastham* (instructed by Russell and Arnholz).

[10] For the appellant Murtagh: *Rose Heilbron Q.C., S. R. Baker* (instructed by Julian S. Goldstone & Co., Manchester). For the appellant Kennedy: *J. di V. Nahum Q.C., P. Astley* (instructed by John P. Moorley, Manchester) For the Crown: *David Karmel Q.C., R. H. Mais* (instructed by the Director of Public Prosecutions).

Held, allowing the appeals, that this was pre-eminently a case where it was essential for the judge to make clear to the jury three possible positions in which the jury might find themselves, bearing in mind throughout that it was not for the accused to establish their innocence, namely: (1) if the jury accepted the explanation of the accused, they must acquit; (2) short of accepting that explanation, if it left them in doubt, they must acquit; (3) on consideration of the whole of the evidence, they must be satisfied of the guilt of the accused of one or other of the crimes alleged against them. The only way in which the learned judge dealt with (2) was by use of the expression " if you do not think it safe to reject the explanation of this accident put forward by the defendants, acquit them both." That expression was equivocal; the jury might have understood it to mean no more than " if you feel you can accept." Further, the judge did not put point (3) plainly to the jury. The summing-up was, therefore, defective and it would not be safe to allow the conviction to stand. [H. P.]

COMMENTARY. See " Direction to the Jury on the Burden of Proof " by Professor Glanville Williams, p. 464, considering this case and *R.* v. *Blackburn* [1955] Crim.L.R. 323.

Rape—*Corroboration of evidence—warning to jury*

R. *v*. HUGHES [11] (Court of Criminal Appeal: Lord Goddard C.J., Devlin and Donovan JJ.: June 13, 1955).

H. was convicted at Warwick Assizes of rape on a girl aged 16. The evidence was that the girl was walking with H. past H.'s house, when he pulled her into the house and committed the offence on her. The girl almost immediately returned to the house of relations where she was staying. She did not make a complaint at once. When H. was seen by the police subsequently he made a statement containing a completely untrue account of his movements that night. H. appealed to the Court of Criminal Appeal against his conviction on the ground that the trial judge did not adequately warn the jury on corroboration, and, in particular, that he did not specifically point out to the jury what was corroboration.

Held, dismissing the appeal, that this was not a case in which corroboration was required as a matter of law; but it was one where corroboration was looked for as a matter of practice and precaution. The learned judge warned the jury carefully and fully on the danger of convicting of rape without corroboration. It was not necessary for the judge to point specifically to the pieces of evidence which might amount to corroboration. As the court had said in *Credland* v. *Knowler* (1951) 35 Cr.App.R. 48, opportunity coupled with untruths told by the prisoner might, depending on all the circumstances of the case, be corroboration. In the present case opportunity was clearly proved and the judge reminded the jury of the prisoner's false statement. Further, the judge pointed out what slight corroboration it was and that it was not that of an independent witness or anything of that sort. The court were of opinion that the jury were adequately warned. [H. P.]

COMMENTARY. See Archbold, 33rd ed., 1088, 1094.

Road Traffic — *Disqualification* — *disqualification concurrent with imprisonment*

R. *v*. PHILLIPS [12] (Court of Criminal Appeal: Lord Goddard C.J., Devlin and Donovan JJ.: June 20, 1955) (*The Times,* June 21, 1955).

P. pleaded guilty at the County of London Sessions to three offences of driving a motor-car while he was disqualified, and was sentenced to twelve months' imprisonment and disqualified for twelve months. P. appealed to the Court of Criminal Appeal against his sentence.

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[11] For the appellant: *Brian Bonfield* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *G. A. J. Smallwood* (instructed by Teebay and Lloyd. Nuneaton).

[12] The appellant appeared in person. The Crown was not represented.

Held, that driving when disqualified had been treated by Parliament as a very serious offence and P had simply ignored a sentence of disqualification by deliberately driving a motor-car on at least three occasions. P.'s sentence in this case was disqualification for the same period as imprisonment, so that the disqualification would only be effective for the very short period of his remission. The court were of opinion that this was a very bad case and, accordingly, increased the period of disqualification from twelve months to three years, to date from conviction. [H. P.]

Road Traffic—*Prohibition of waiting—loading goods on to a vehicle—putting goods in private car*

SPRAKE *v.* TESTER [13] (Q.B. Divisional Court: Lord Goddard C.J., Cassels and Sellers JJ.: January 13, 1955).

By a regulation made by the Norwich Corporation under the Road Traffic Act, 1930, the waiting of a vehicle in certain streets was prohibited between the hours of 8 a.m. and 8 p.m. except "to enable goods to be loaded on to or unloaded from any such vehicle." S., the owner of a motor-car, parked his car in a "prohibited" street while he went into a shop. He there bought six champagne glasses, which were packed into a parcel about a foot square, and put them into his car. On being charged with a breach of the regulation, S. contended that he was "loading" goods on to his car and, therefore, he had committed no offence. The justices convicted S. On appeal:—

Held, dismissing the appeal, that the exception, although not limited to goods vehicles, was intended to cover the loading or unloading of a vehicle for some commercial purpose; whether or not a particular case came within the exception was a question for the justices and, in the circumstances, they were entitled to convict.

Per Lord Goddard C.J.: There may be many cases in which a motor-car would be used for something which it would not be reasonable for anybody to carry in his hand, for example, a piece of furniture or half a dozen pictures to be reframed or even a heavy laundry basket, and I think that it might be said that if he was putting those things into the car or taking them out there was a loading or unloading within the terms of the order. [J. D. P.]

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[13] For the appellant: *B. Stuart Horner* (instructed by Amery-Parkes & Co.). For the respondent: *R. E. Seaton* (instructed by Sharpe, Pritchard & Co. for Bernard D. Storey, Town Clerk, Norwich).

Sentence—*Preventive detention—man of 56 with 27 convictions—ten years*

R. *v.* MAGGS [14] (Court of Criminal Appeal: Lord Goddard C.J., Devlin and Donovan JJ.: June 20, 1955).

M. was convicted of obtaining a small sum of money by false pretences and was sentenced to seven years' preventive detention. He was 56 years of age and had twenty-seven previous convictions. The present offence was committed while M. was on probation for a similar offence committed within a few days of being released from prison. He appealed to the Court of Criminal Appeal against his sentence:—

Held, that this was exactly the sort of case for which Parliament had provided the sentence of preventive detention. Although seven years was normally the minimum sentence of preventive detention, it was not to be thought that that term should always be imposed. M. was one of those people against whom the public had to be protected and the sentence would, therefore, be increased to one of ten years' preventive detention. [H. P.]

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[14] For the appellant: *B. R. O. Carter* (instructed by the Registrar, Court of Criminal Appeal). The Crown was not represented.

Acts and Orders

Agriculture

See FATSTOCK (GUARANTEE PAYMENTS) (MARKING) ORDER, p. 512, below.

Animals

SLAUGHTER OF ANIMALS (PREVENTION OF CRUELTY) (AMENDMENT) REGULATIONS, 1955 (S.I. No. 917): operative July 1, 1955. The requirement contained in regulation 14 of the Regulations of 1954 (S.I. No. 1584; [1955] Crim.L.R. 47) that an approved casting pen must be used for the slaughter of animals by the Jewish or Mohammedan method applies only with respect to adult cattle.

Birds

See WILD BIRDS PROTECTION (COUNTIES OF THE CITIES OF EDINBURGH AND DUNDEE) ORDERS (REVOCATION) ORDER, p. 513, below.

Customs and Excise

COMMERCIAL SAMPLES (TEMPORARY IMPORTATION) REGULATIONS, 1955 (S.I. No. 814): operative July 1, 1955. Certain commercial samples and advertising films temporarily imported into the United Kingdom may be delivered without payment of duty.

Dangerous Drugs

DANGEROUS DRUGS ACT, 1951 (APPLICATION) ORDER, 1955 (S.I. No. 872): operative July 1, 1955. Part III of the Dangerous Drugs Act, 1951, applies to diethylthiambutene, 1-methyl-4-phenylpiperidine-4-carboxylic acid isopropyl ester and normethadone and to their salts and any preparation, admixture, extract or other substance containing any proportion of them.

Defence Regulations

See TRANSFER OF FUNCTIONS (IRON AND STEEL) ORDER, p. 514, below.

Emergency Laws

The state of emergency declared on May 31, 1955, because of the railway strike (see [1955] Crim.L.R. 444) was brought to an end by proclamation on June 21, 1955.

Food and Drugs

FATSTOCK (GUARANTEE PAYMENTS) (MARKING) ORDER, 1955 (S.I. No. 852): operative June 20, 1955. The Order of 1954 (S.I. No. 872; [1954] Crim.L.R. 643) is revoked and replaced with certain amendments. New alternative markings are prescribed for fat sheep and fat pigs which have been approved at livestock certification centres as eligible for guarantee payments. Any animal or carcase which has been previously certified and which bears any of the prescribed marks may not be presented for certification.

For penalties for infringements, see the Defence (General) Regulations, 1939, reg. 92.

FOOD STANDARDS (TABLE JELLIES) (AMENDMENT) ORDER, 1955 (S.I. No. 828): operative June 16, 1955. The Order of 1949 (S.I. No. 1656) is amended and provision made for the use of low setting gelatine in the manufacture of table jelly crystals.

Juvenile Courts

JUVENILE COURTS (LONDON) ORDER, 1955 (S.I. No. 873): operative July 4, 1955. The No. 2 Order of 1952 (S.I. No. 1421), as amended, is revoked and replaced. A separate juvenile court is set up for the division of the metropolitan police court area for the time being assigned to the south-western police court; it will sit on Tuesdays at 10 a.m. at the Anchor Mission, 273 Garratt Lane, Wandsworth, S.W.18.

London

The following Orders have been made detailing prescribed routes: S.I. 1955, Nos. 844, 884 (City of London); 845 (St. Marylebone).

The following Order has been made prohibiting waiting: S.I. 1955, No. 846 (Northfleet).

Magistrates' Courts

The following Orders altering petty sessional divisions have been made: S.I. 1955, Nos. 948 (West Sussex); 949 (Gloucestershire).

Police

POLICE REGULATIONS, 1955 (S.I. No. 882): operative September 5, 1955. The rates of overtime allowance have been increased as follows, the figures in brackets showing the rates for women officers: sergeant, 6s. 10d. (6s. 2d.); constable, 5s. 9d. (5s. 3d.).

The rates of detective allowance have also been increased and are now: inspector, £60 (£54); sergeant, £52 (£47); constable, £44 (£40).

So far as the exigencies of duty permit, every police officer below the rank of superintendent is to be allowed one rest day in every fortnight in addition to his weekly rest day. Annual leave is shortened and is now: chief inspectors, 25 days; inspectors, 22; sergeants, 19 and constables, 17; in the metropolitan police force the annual leave for station inspectors is now 23 days, and for station sergeants and first class sergeants (C.I.D.), 21 days.

The Home Secretary has sent a letter concerning the operation of these regulations to all police authorities.

Road Traffic

MOTOR VEHICLES (INTERNATIONAL CIRCULATION) ACT, 1952 (COMMENCEMENT) ORDER, 1955 (S.I. No. 875): operative June 21, 1955. The Act of 1952 is brought into operation. It re-enacts with modifications the Motor Car (International Circulation) Act, 1909, and amends the law relating to excise duty payable in Great Britain on vehicles licensed in Northern Ireland and payable in that country on vehicles licensed in Great Britain.

Salmon and Freshwater Fisheries

AVON AND DORSET RIVER BOARD (FISHERIES) ORDER, 1955 (S.I. No. 854): operative June 13, 1955. Certain provisions relating to fixed engines, stocking, eels and elvers and the mesh of nets which were formerly set out in an Order for the Hampshire Rivers Fishery District are applied with minor amendments to the whole of the Avon and Dorset River Board Area.

DEE AND CLWYD RIVER BOARD (FIXED ENGINES) ORDER, 1955 (S.I. No. 855): operative June 13, 1955. With the approval of the Minister of Agriculture and Fisheries the Board may erect and work fixed engines for catching salmon or migratory trout for artificial propagation and scientific purposes. It may also place devices in inland water to catch or obstruct non-migratory trout for these purposes.

The River Dee District Fishery Order, 1940 (S.R. & O. No. 2062) is revoked.

Scotland

Birds

WILD BIRDS PROTECTION (COUNTIES OF THE CITIES OF EDINBURGH AND DUNDEE) ORDERS (REVOCATION) ORDER, 1955 (S.I. No.

818): operative June 3, 1955. Orders protecting wild birds and their eggs applying in the cities of Edinburgh and Dundee which were continued in force by section 3 (3) of the Protection of Birds Act, 1954, are revoked.

Trade and Industry

TRANSFER OF FUNCTIONS (IRON AND STEEL) ORDER, 1955 (S.I. No. 876): operative July 18, 1955. A number of functions of the Minister of Supply relating to iron and steel are transferred to the Board of Trade; they include his functions under the Iron and Steel Act, 1953, and under regulation 55AB of the Defence (General) Regulations, 1939 (price control of goods and services).

Letters to the Editor

Heroin

Sir,

Your June editorial refers to the ban on the manufacture and export of heroin in this country stating " it is understood that perfectly good substitutes for this drug are now available " (Lord Mancroft, H.L. Debates, Vol. 192, col. 595; April 27, 1955). The ban on heroin and in particular the remark quoted have received the unanimous condemnation of practising physicians in this country. This can be seen by consulting the medical press for the last few months. In the interests of co-operation between Medicine and the Law, I would suggest that you inform your readers of the following points: First, there is no good substitute for heroin in the relief of intractable pain. Second, the decision of the Economic and Social Council of UNO to ask all member countries to ban the drug was made on the ground that supplies were being illicitly obtained from the manufacturers, whereas there is no evidence of the existence of such practice in this country. Third, the Minister of Health supported the ban on the advice of the medical advisory committee of the Central Health Services Council which body made (so far as can be ascertained) no effort to obtain the views of the medical profession. Fourth, heroin is easily made from morphine, which drug will continue to be available subject to the usual restrictions (which applied to heroin) and therefore it is not clear how the ban will be effective. Fifth, a motion deploring the ban on heroin and instructing the Council of the B.M.A. to seek direct access to the Government in order to get rid of the ban, was passed unanimously at the Annual Representative Meeting of the B.M.A. in London on June 3. Lastly, there are only about 40 heroin addicts in this country, and experience has shown that heroin addiction has persisted and increased in countries where its use has been forbidden.

Yours faithfully,

J. D. J. HAVARD,
M.A., LL.B., M.B., B.Chir.,
Barrister-at-Law, Medical Practitioner.

Lowestoft, Suffolk.

Evidence from bankers' books

Sir,

On p. 374 above, you refer to the decision of a Bow Street magistrate that copies of the books of the Bank of England were not admissible under the Bankers' Books Evidence Act, 1879. It was held in *Mortimer* v. *M'Callan* (1840) 6 M. & W. 58, that copies of the books of the Bank of England are receivable in evidence at common law because these books are of such great concernment to the whole of the national creditors that the removal of them would be too inconvenient. As the Act of 1879 does not apply to the Bank of England, it would seem that this case is still of authority, and it is cited as good law in the Eighth Edition of Cockle's Cases and Statutes of Evidence, p. 330.

Yours faithfully,

" CLERK TO BOROUGH JUSTICES."

[The case of *Mortimer* v. *M'Callan* is certainly authority that copies of the books of the Bank of England are admissible in evidence at common law. What the magistrate in *R.* v. *Lewis* did was to say that such copies are not evidence *of the facts contained therein,* when the prosecution desired to prove that certain specifically numbered bank notes had been dealt with in a particular manner. In the case of the other banks, the Bankers' Books Evidence Act makes the facts contained in the copies prima facie evidence of those facts, but this Act does not apply to the Bank of England.—Eds.]

Blood Groups in Evidence

Sir,

In connection with a proposed article on this subject I am anxious to gather information regarding all the cases both civil and criminal in which expert evidence of blood grouping has been given before U.K. courts and in particular those cases in which the courts have drawn inferences from the rules governing the inheritance of blood group factors. These cases are rarely reported and it would be most helpful to hear from solicitors or others concerning the names of the parties, date, court, type of case, and the result. It is hoped that by giving an account of the extent to which blood groups have been received in evidence the confidence of the legal profession in this type of evidence might be increased.

ALISTAIR R. BROWNLIE,

Solicitor.

2, *Abercromby Place, Edinburgh.*

Evidence of paternity

Sir,

In your issue for December, 1954, on page 921 it is stated that " the House of Lords have pronounced alleged family likenesses to be ' loose and fanciful ' evidence of paternity."

We have been unable to trace this case and will be grateful if you could let us have the citation to it.

Yours faithfully,

HUNTER & GREIG,
Advocates, Solicitors, etc.

Jinja, Uganda.

[In *Slingsby* v. *Attorney-General* (1916) 33 T.L.R. 120, Lord Shaw said (p. 122) of evidence given as to the likeness of the child to the alleged parents " that class of evidence, except in the case of a difference of colour, had in Scotland for more than a century been rejected on the ground that it was loose and fanciful. In England it was open to the same objection."—Eds.]

Books and Periodicals

Reviews:

Stone's Justices' Manual. Eighty-seventh edition. By James Whiteside and J. P. Wilson. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. 1955. Vol. 1, cccxxvii and 1,330 pp.; Vol. 2, vii and 1,620 and (index) 220 pp. (Thin edition 82s. 6d. net; thick edition 77s. 6d. net.)

The eighty-seventh edition of Stone's *Justices' Manual* maintains the high standard set by previous editions and the learned editors, having taken advantage of the fact that no statute of far reaching importance to magistrates' courts was passed during 1954, have been able to effect many minor amendments which, they claim, make this one the most " improved " edition for many years.

Although few who use this book regularly will quarrel with this claim, they will, if they know the learned editors, expect the next edition to contain still further and better improvements.

Consideration for the reader has prompted the editors to make much more use of paragraphs in the extensive notes throughout the book. This is particularly noticeable in Part III, but perhaps the most notable improvement in this respect is the revision of the notes on wife desertion. These notes have been completely rewritten and include welcome separate paragraphs dealing, *inter alia,* with constructive desertion and just and reasonable cause for desertion.

Is it too much to hope that the next edition might contain rewritten notes on the subject of persistent cruelty with possibly a separate paragraph dealing with the vexed question of what is loosely called " mental cruelty "? The long list of cases including *Westall, Kaslefsky, Woollard, Eastland* and more recently *Cooper* and *Ivens*, if condensed in the usual admirable Stone fashion, would prove of inestimable value to the busy practitioner and the sometimes harassed justices' clerk.

Whilst it is acknowledged that Stone's *Justices' Manual* is a book of reference only and was never intended to be used as a substitute for the judgments in decided cases, one or two magistrates' courts committees, none-the-less, appear to consider that a justices' clerk can adequately advise his bench on all branches of magisterial law provided he has an up-to-date copy of that book. The learned editors of Stone may be somewhat flattered by the views of such committees but they will be the first to agree that the view is wrong. Since such a view exists, however, it is to be hoped that they will be prepared to help their less fortunate colleagues as far as possible.

Seldom does one look at Stone in vain for guidance on magisterial matters and I was much surprised some weeks ago to find no mention therein of section 86 of the Lunacy Act, 1890. If this section has to be invoked in the south of England it is expected that in the north recourse to it will be made much more frequently. With great respect I would ask the learned editors to consider including this section and section 87 of the same statute in their next edition.

No justices' clerk and no person who regularly practises in magistrates' courts can adequately do his work without this book. Much praise and the grateful thanks of all are due to the editors for their monumental task in justifying once again its claim to be "The Yearly Justices' Practice."

Albert Bradley.

United in Crime. By H. Montgomery Hyde. London: William Heinemann, Ltd. 1955. xxx and 191 pp. (no index). (15s. net.)

Mr. Montgomery Hyde is widely known as a criminologist, and his features have gained him a popular following in various daily and weekly journals and newspapers. For those who have read his recent series in the London *Evening Standard* much of this book will be no more than a slightly augmented collection of that series; but it makes fascinating reading none-the-less. What are interesting accounts of individual cases become something more than that, for when read together the reader is able to gain some picture of the comparative methods of those two eminent lawyers Sir Travers Humphreys and Lord Simon—two lawyers who practised mostly in different fields, but whose common factor was an outstanding grasp of any case on which they embarked and the brilliant manner in which each would seek out and expose the weakness in his opponent's case.

The last two sections of this book are taken up with somewhat different material, for here the author deals with two important and controversial topics—the case for and against flogging and the problem of the juvenile criminal.

Mr. Hyde rightly concludes that the question whether to flog or not is one that cannot be resolved on any basis other than individual opinion: and the same is undoubtedly true of the question whether or not we have adopted the right methods of dealing with the young offender. But Mr. Hyde's own clear treatment of the arguments on both sides of these two problems could be a helpful factor in clearing up some of the widely prevalent misconceptions on these subjects; and if these chapters of his book are as widely read as his accounts of famous criminal cases, then public discussion on the topics will be the better informed and the more constructive for it.

F. Maurice Drake.

Murder in France. By Alister Kershaw. London: Constable & Co., Ltd. 1955. 188 pp. (no index). (15s. net.)

Murder in France contains seven studies of murder ranging from the 1850's to the 1940's. All the crimes depicted took place in France and there is a useful preface summarising French criminal investigation and procedure. The preface contains some interesting comparisons between French and English methods, and, in particular, destroys some of the widely misunderstood conceptions of French justice, for example, that in France a prisoner is guilty until proved to be innocent. The author demonstrates that the burden of proof is on the prosecution in France as it is in England.

This is a book which is hard to put down. Perhaps its power to grip the reader is due to the fact that we in England, generally speaking, know so little of French crimes and criminals, but it is more likely to be due to the author's exceptional talent for bringing alive his subject-matter. Mr. Kershaw is never at a loss for a vivid, colourful and descriptive phrase. Thus Verger, the priest who in 1857 murdered the Archbishop of Paris because he wanted to protest against the doctrine of the Immaculate Conception, is described as having a "menacing piety." The author's comment on this unusual motive speaks for itself: "While disagreements on minor theological points are traditionally accepted as constituting sufficient justification for the large-scale slaughter of a religious war, Verger's statement must be recognised as providing one of the most satisfyingly bizarre motives ever put forward in respect of a private murder." Again, Vacher, the French equivalent of Jack the Ripper, who murdered 11 women and boys before being finally brought to justice, is said to have gazed avidly at the women in the crowded court-room at his trial to their "trepidant delight." The crimes of Madame Caillaux, who murdered a journalist, apparently for political reasons, and of Michel Henriot, the breeder of foxes, whose murder of his wife was overheard on the telephone by the operator, are given the same colourful and efficient handling. In the study of the fabulous Dr. Petiot, whose mass murders during the last war shocked the world, the author's special talents are utilised to their best advantage. The murderer's motive was solely financial and, by a cunningly contrived scheme whereby the victims thought they were to be smuggled out of the country, Dr. Petiot was able to dispose of at least 66 persons before being brought to justice. The man who was able to execute so infamous an operation is described by the author as having "sturdy notions of self interest."

These are, all seven, splendidly written studies of French murderers and their crimes. It is a book well worth reading.

HENRY PALMER.

Murderers In Our Midst. By Stanley Firmin. London: Hutchinson. 1955. 192 pp. (16s. net.)

The Woman in the Case. By Edgar Lustgarten. London: Andre Deutsch, Ltd. 1955. 218 pp. (10s. 6d.)

Chance and routine hard work are the themes of *Murderers in our Midst.* Mr. Stanley Firmin gives brief accounts of a number of murder cases where both these elements have combined to convict the murderer. From his position as a crime correspondent to the *Daily Telegraph* he has been able to see the tremendous amount of hard work put in by Scotland Yard detectives on murder cases. Not always have results been forthcoming and this book relates some of the cases where no murderer has been convicted. Another aspect dealt with is the overweening pride which draws the murderer into thinking that he can defeat the organisation of Scotland Yard. This book is a tribute to the efficiency and effectiveness of that organisation.

Under the headings the acquitted, the witness, the victim and the enigma, Mr. Lustgarten in *The Woman in the Case* considers the character and psychology of, respectively, Alma Rattenbury, Helen Lambie, Harriet Staunton and Madeleine Smith. The point of the book seems to be, in the words of the publishers, " Had [the characters and psychology] been different in any of them, it is safe to say that the law would probably have taken a different course." The best accounts are those about Alma Rattenbury, accused together with her lover, Stoner, with the murder of her husband, and Helen Lambie, the somewhat untruthful witness in the Oscar Slater case, and are well worth reading. The Madeleine Smith account is spoilt by Mr. Lustgarten's insistence on proving his remark that " no great imaginative powers need be exerted to plot the course of Madeleine's cross-examination " had this been permitted.

P. H. B. A.

Women of the Streets. A sociological study of the common prostitute. Edited by C. H. Rolph. London: Secker & Warburg. 1955. xvi and 245 and (index) 3 pp. (21s. net.)

Bedevilled by its publicity value, the problem of prostitution rarely forms the basis of a serious and considered study. The book is an exception. It contains a useful outline of the present law, and an appraisement of the various methods of sentencing. Enough doubts are raised for one to ponder on this age-old aspect of human behaviour with its many hampering tentacles, *e.g.*, an attempt to " clean up the streets " by using heavy fines and prison sentences, offers the strongest likelihood that the girls—as one of them says—will go into the cafes and pubs, or lean out of the windows.

The case notes of the prostitutes interviewed by a research worker, and the analysis of official police records, show that economic considerations act only as a precipitating factor, and early influences (the most obvious being an unstable family background) play an important part in a consciously chosen drift into prostitution.

This survey points to many difficulties without offering oversimplified answers. From it one realises that we are only on the fringe of understanding social behaviour, and a long, long way from offering adequate solutions.

JEAN GRAHAM HALL.

Books Received

An Introduction to Naval Court-Martial Procedure. Fifth edition by Captain A. D. Duckworth and Commander R. R. S. Fisher, D.S.C. Devonport: Hiorns & Miller, Ltd. 1955. 110 pp. (no index). (15s. net.)

My Testament. By Captain Peter Baker, M.C. London: John Calder (Publishers), Ltd. 1955. 288 pp. (15s. net.)

Articles:

Journal of Criminal Law, Criminology, and Police Science, Vol. 45.
Training programmes for juvenile offenders, p. 633.
What is wrong with American prisons and jails? p. 662.
The concept of temporary insanity viewed by a criminologist, p. 685.
Capital crimes in the States, p. 690.
State academies for police, p. 729.
The police patrol car, p. 748.
Role of the pathologist in arson investigation, p. 760.

Magistrate, Vol. 11.
Imprisonment, p. 51.
The atavistic jury, p. 53.
Parents, children and the criminal law, p. 55.

Law Journal, Vol. 105.
Provocation reducing murder to manslaughter, p. 404.

Law Times, Vol. 219.
Shooting game at night, p. 296.
" Beyond reasonable doubt," p. 323.

Justice of the Peace, Vol. 119.
Consent to assault, p. 392.
Fined 20s., seven days to pay, p. 407.
In charge (drunk in charge of a motor vehicle), p. 423.

Police Review, Vol. 63.
Anything but the truth (police evidence), p. 398.

THE
CRIMINAL LAW
REVIEW

Editors
JOHN BURKE and PETER ALLSOP, M.A.
Barristers-at-Law

Editorial

Capital punishment

The Howard League for Penal Reform has sent to the Home Secretary a memorial signed " by some hundred leaders of public opinion other than M.P.s " calling for the abolition of capital punishment.

Summary justice

Commencing with this issue we include at p. 563 a new feature entitled " Summary Justice " giving short particulars of cases of interest in magistrates' courts together with a reference to the newspaper in which a more elaborate account may be found. The Editors would be grateful to subscribers, particularly outside London, for newspaper cuttings containing reports of cases of interest.

Imprisonment of infant driving while disqualified

In the report of *Davidson-Houston* v. *Lanning* [1955] Crim.L.R. 311 the Divisional Court were stated to have held that section 17 (2) of the Criminal Justice Act, 1948, did not supersede section 7 (4) of the Road Traffic Act, 1930, by which imprisonment must be imposed for driving while disqualified in the absence of special reasons. Our reporter has now had an opportunity of looking at a full transcript of the judgment from which it is clear that the court decided that, in considering the sentence on a person under twenty-one for an offence against section 7 (4) of the Act of 1930, justices must apply their minds to the provisions of section 17 (2) of the Act of 1948, and only if no other method is appropriate should they impose imprisonment. Our reporter apologises for any inconvenience that may have been caused.

Did the legs that carried you in carry you out?

A new definition of drunkenness has been added to the many that have been attempted. This time from France we learn that a drunkard is a person " reasonably suspected of a harmful degree of chronic intoxication."

Legal aid

Wimbledon magistrates refused to grant legal aid to a youth charged with driving under the influence of drink when he told them that his father had bought him a second-hand car for £77 10s. They told him to sell the car and provide his own legal representation.[1]

Borsholders

In Buckinghamshire moves have been made to abolish the ancient office of borsholder, parish constable. There is no pay or uniform attached to the office, nor is any training necessary for it, but the borsholder has all the powers of an ordinary police constable within his parish. He is appointed by the parish council, subject to the approval of the magistrates, and cannot refuse office. Opponents to the present moves to abolish the borsholder point out that he does much to help the police.

Parliament

Information in murder cases

In all trials for murder the prosecution make available to the defence copies of all relevant documents, the names and addresses of all persons who can give material evidence but whom the prosecution do not propose to call as witnesses, copies of relevant statements made to the police by persons since deceased which are not admissible as dying declarations, and the names and addresses of persons other than police officers to whom such statements have been made (H.C. Debates, Vol. 544, col. *83*; July 25, 1955).

Drunkenness among young persons

The increase of drunkenness among young persons is causing much concern, and the extent of the problem is shown in a report published by the Economic Research Council, " Further evidence of a continuing increase in drunkenness among persons aged under 21 in England and Wales—period 1950–1954." In England and Wales the number of convictions for drunkenness of persons under 17 rose from 101 in 1953 to 136 in 1954, and of persons aged between 17 and 21 from 2,995 in 1953 to 3,366 in 1954 (Vol. 544, col. 1351 ; July 28, 1955).

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[1] *The Times*, August 1, 1955.

Police control and pedestrian crossings

The Commissioner of Police of the Metropolis has particularly instructed his officers that when performing duty close to zebra crossings but not actually controlling traffic they should avoid giving any impression that they are controlling the traffic ; the importance of giving clear and correct signals has also been impressed on officers who are in control of traffic at crossings. (Vol. 543, col. *114* ; July 7, 1955).

Police dogs

The Home Secretary spoke recently of the use made of police dogs. The Metropolitan Police began using six trained Labrador dogs in 1946, first experimentally on the outskirts of London and later in Hyde Park. Subsequent experience has shown that dogs can be used effectively in built-up areas. The number of dogs used by the Metropolitan Police Force is at present 150, the great majority being Alsatians. They are used for a number of purposes including tracking, searching premises to locate thieves and the pursuit of fleeing criminals, as well as for general preventive work on patrol (Vol. 543, col. *113* ; July 7, 1955).

Metropolitan Police

The Home Secretary has decided to retain the rank of station sergeant in the Metropolitan Police Force (Vol. 544, col. *61* ; July 21, 1955).

Prison sentences

The Home Secretary, after giving due consideration to the proposals of the Howard League for Penal Reform (see [1955] Crim.L.R. 462), has decided that it would not be the best course to set up a Departmental Committee to consider ways of reducing the number of short-term prison sentences. He proposes instead to ask the Advisory Council on the Treatment of Offenders to make a general survey of the problem and he has asked the Howard League for any detailed suggestions which they may care to make (Vol. 544, col. 537 ; July 21, 1955).

Prisoners' letters

A prisoner was recently forbidden by the prison governor to write to his Member of Parliament until he had petitioned the Home Secretary. The Home Secretary, when questioned about this, admitted that a mistake had been made and he is taking steps to prevent its repetition. Where prisoners wish to make any complaints about prison treatment they must first do so through one of the channels appointed for the consideration of such grievances (Vol. 543, col. *196* ; July 14, 1955).

Compensation to attacked prisoners

Where physical injury causing incapacity is inflicted on one prisoner by another, it is not necessarily proper that the person injured should receive compensation from public funds. If he considers that the attack was due to or facilitated by the negligence of the prison authorities, he may have a claim at common law for damages. A prisoner who is attacked may be given some remission of sentence as compensation (Vol. 543, col. *71* ; July 4, 1955).

Prisoners' pre-release habilitation scheme

The response of the preventive detention prisoners who have been selected for the pre-release habilitation scheme at Bristol has been very satisfactory, though it is too soon to try to assess long-term results. The Prison Commissioners are proposing to extend the scheme to other recidivist prisoners (Vol. 543, col. *71* ; July 4, 1955).

Judicial appointments

Mr. Charles John Addison Doughty, Q.C., M.P., has been appointed Recorder of the Borough of Brighton.

Mr. Cecil Campion has been appointed a Metropolitan Magistrate in place of Mr. John Lhind Pratt, who has retired.

Brigadier A. C. C. Willway, C.B., C.B.E., T.D., D.L., has been appointed chairman of the Court of Quarter Sessions for the County of Surrey.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Review. They should be sent to the EDITOR, *Criminal Law Review*, 3 CHANCERY LANE, LONDON, W.C.2. *Every effort will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Identification Parades

By Christopher Williams, *Barrister-at-Law*

Identity is an element in every accusation—often an obvious one, and one therefore frequently to be taken for granted, but nevertheless it is essential. It is often easy enough to prove that the crime has been committed by someone, but sometimes a little harder to prove that the accused is the person who did it—or, in other words, that the police have got the right man.

Proof of identity, therefore, is of the greatest importance to the police. They have a duty, and an interest, to ensure that it is both conclusive and acceptable to the court. The innocent must not be convicted, nor the guilty acquitted, through defective proof of identity.

This question of identity may, of course, be settled in several ways. The accused may admit his guilt; his fingerprints may prove that it was he who committed the crime; his previous character, convictions, activities or even articles in his possession may go to show his identity with the criminal; or—and this is where we come in—a witness to the crime may be able later to pick out the accused from among a number of other men and say: " This is the man I saw commit the crime."

All these ways of identification are, in a sense, but variations of the same thing. A particular person, endowed by the nature of things with certain recognisable characteristics or peculiarities of body or conduct, has committed an offence; find the person with those recognisable peculiarities and you probably have the criminal. Whether the peculiarities are of facial feature, of voice, of fingerprint, of footprint, of conduct, or even of scent, the principle is the same; the only difference between them is the degree of certainty which the court will attach to the identification.

But it is the identification of the accused when seen subsequently by witnesses among other men that is the subject of this essay. In essence, the witness is asked, not " Do you know this man? " but " Which one of these men do you recognise? " The classic form of this type of identification is for the accuser or a witness to be asked in court if he sees the offender; the witness then indicates the man in the dock. It is obvious, however, that such an identification on its own gives scope to the argument that the witness is open to the *ex post facto* form of self-deception—

the man in the dock must be a criminal or the police would not have put him there; therefore he must be the man who did the act complained of.

This objection exists even more strongly, of course, to the informal method of identification which may sometimes have to be resorted to, of asking a witness to look at a man in custody on his own and to say if he recognises him. As was said in an Australian case: " The English courts treat it as indisputable that a witness, if shown the person to be identified singly and as the person whom the police have reason to suspect, will be much more likely, however fair and careful he may be, to assent to the view that the man he is shown corresponds to his recollecton " (*Craig* v. *R.* (1937) 49 Commonwealth L.R. 429).

It is to overcome this sort of weakness that the formal identification by parade is employed. In essence it is simple. A number of men are collected together and the suspect is placed among them; then the witness is asked to say whether he recognises any of the men so assembled as being the man he saw commit the crime.

Precautions to be taken

From what has been already said, however, it is clear that there are dangers to be avoided and precautions to be taken. Many of these are pointed out in a Home Office circular letter on the subject, dated January 1, 1925, amended January 14, 1926. These precautions are all designed to remove from the process of identification all factors which might lead—or which might be said by the defence to have led—the witness to identify the accused by the circumstances surrounding him rather than by his recognisable personal peculiarities. In the words of the letter: " Every precaution should be taken (a) to exclude any suspicion of unfairness or risk of erroneous identification through the witnesses' attention being directed to the suspected person in particular instead of indifferently to all the persons paraded, and (b) to make sure that the witnesses' ability to recognise the accused has been fairly and adequately tested."

Indeed, these words echo the comments of Lord Hewart C.J. in the case of *R.* v. *Dwyer and Ferguson* [1925] 2 K.B. 799 at 803: " It is the duty of the police to behave with exemplary fairness." Fairness, let it be remembered, not only to the prisoner lest he be innocent, but fairness also to the victim of the crime and to the general public, lest a guilty man escape justice through rejection by the court of the evidence of identification.

Supposing, then, that a decision has to be made whether to hold an identification parade. This decision must naturally rest with the officer in charge of the case, or his superior officer. He knows the state of the case, and it may be that there is already sufficient evidence of the identity of the suspect with the criminal, without resorting to the trouble of holding a parade; the identification of the suspect at a parade may be superfluous. On the other hand, despite a sufficiency of other evidence against the suspect, the witnesses may not have been able to get a good look at the criminal, and so may be unlikely to pick the suspect out at a parade; in which case the officer in charge of the case may wisely decide that an unsuccessful identification parade would give a false appearance of weakness to the case against the suspect. It would appear that an accused person has no right to insist upon an identification parade. In every case it is a matter purely for the officer in charge of the case to decide upon the need and the desirability of a parade, in the light of the particular facts of the case.

Officer to conduct the parade

Once he has decided to hold a parade, the matter passes from his hands, and must be taken over by the officer in charge of the parade. No officer can fulfil both functions. It must be an officer entirely unconnected with the case who is to make all the arrangements for the control and conduct of the parade; the officer in charge of the case must studiously avoid having anything at all to do with it. Obviously this is essential, even if it means delay and bringing in someone else specially for the purpose. If the officer in charge of the case, who has brought the suspect in, were to be seen by the suspect looking after or speaking to the witnesses, or giving instructions to other officers doing that sort of thing, it would be easy for the suspect to allege that he had supplied the witnesses with some clue to the suspect other than the witnesses' own memories.

As will be seen later, there is no objection to the presence of the officer in charge of the case during the parade, provided he takes no part in it. Indeed, from the practical point of view, there are very sound reasons for him being present, in the view of the suspect; for then there can be no suggestion that he has had any opportunity of influencing the witnesses. But if he cannot be present all the time, then he must clearly be absent all the time; it would be fatal for him to be allowed to wander in and out of the parade place.

Suspect's objections

But before getting on with the parade, the officer in charge of it must ask the suspect if he has any objection to being put up for identification, making sure that he understands both the nature and the purpose of the parade: it can properly be pointed out that the parade is in the interests of an innocent man, who will not be picked out by the identifying witness. Some forces have prepared explanatory notices which are handed to the suspect, but, although these are sound enough in principle, oral explanation will still normally be needed. The suspect, although, as has been pointed out, he cannot insist on a parade, is perfectly entitled to object to one; but, of course, he can scarcely expect to be listened to very sympathetically if he afterwards complains of the unfairness of any subsequent informal identification method used, such as was suggested judicially in the unreported case of *R.* v. *Lamb* (Bristol Assizes, November 21, 1946).

In this case, after the identification parade had started, the suspect started playing the fool and dancing about, grimacing, and making such remarks as " Go on, I'm your man, why waste time," and so on. Cassels J. said that it was unnecessary for the police to require the other members of the parade to copy the suspect's antics, but that it was perfectly satisfactory to have dismissed the parade and merely asked the witness if he knew the prisoner.

But even though in such circumstances it is the suspect himself who has deprived himself of the security and protection offered by the formal parade, and therefore no blame can attach to the police, the subsequent informal identification cannot be as strong as a formal identification. A witness is more likely to say he recognises a man if he sees him alone in the charge room than if he sees him lined up with other men. It therefore behoves the police to protect themselves against allegations of unfairness—for instance, that they had unreasonably refused an identification parade—by being careful to have another officer present when the matter is discussed.

Then, if the suspect does not object to the parade, he must be told that he may have his solicitor or a friend present, provided, of course, that they take no part in the proceedings. There can, of course, be no objection from the police officer's point of view to the presence of a responsible observer such as a solicitor; he would, in fact, afford an added protection against malicious and unfounded allegations of unfairness. And, in the improbable event of such a person attempting to interfere with the conduct of the parade, there is the simple remedy of ejection, or even of calling the whole thing off.

Witnesses' encounter with the suspect

Care must be taken during these preliminary arrangements—and, of course, during the actual parade—that the witnesses who are to be called upon to view the parade do not get an opportunity of seeing the suspect before he is in position on parade. Nor, of course, should they see the other members of the parade, which comes to the same thing. In the old case of *R.* v. *Dickman* (1910) 5 Cr.App.R. 135, it was alleged that the police invited one of the witnesses to peep through a window of a room in which the suspect was being interrogated by a detective officer. Alverstone C.J. put it rather mildly when he said: "We deprecate in the strongest manner any attempt to point out beforehand to a person coming for the purpose of seeing if he could identify another, the person to be identified."

But it is not only essential to avoid a deliberate preliminary confrontation of the sort dealt with in *R.* v. *Dickman.* Police must guard equally against an accidental encounter. It may be difficult in some police stations to guard against this; the building may be so constructed or arranged that a witness reporting at the front office may accidentally get a glimpse of the suspect being brought from the C.I.D. office along a corridor to where the parade is to take place, or he may be allowed to go into a room where members of the parade are being assembled. It is a matter of forethought and careful organisation to avoid such involuntary encounters.

The witnesses, moreover, must not be assisted to identify the prisoner in any way, *e.g.*, by being shown photographs, or by being given descriptions, whether of the suspect or of any of the persons to be lined up with him.

On the face of it, this is merely a variation of the last point; there is no difference between showing the suspect to the witness, and showing a photograph of the suspect to the witness, or describing him. As to description, in the old case of *R.* v. *Bundy* (1910) 5 Cr.App.R. 270, it was found that, before the parade was held, a detective officer had given a full description of the suspect to a witness who had only had a very poor view of him during the commission of the crime. An identification in such circumstances clearly could not hold water.

The use of photographs

As far as photographs are concerned, it is equally wrong, as was pointed out by Lord Hewart C.J. in *R.* v. *Dwyer and Ferguson,* for a police officer, dealing with witnesses who are afterwards to be called as identifying witnesses, to show to those witnesses photographs of those whom they are about to be asked to identify beforehand. "It would be most improper to inform a witness beforehand, who was to be called as an identifying witness, by the process of making the features of the accused person familiar to him through a photograph."

But that is not the whole story. In that case the police had shown to the witnesses single photographs, bearing prison numbers, of the suspects, who were already in custody; and then allowed them to go before the identification parade in which the suspects were lined up. It is one thing, and an obviously wrong thing, to show a witness a picture of a prisoner, and then ask him to pick him out at a parade. But it is quite another thing for the police, who may not yet be sure whom to arrest, to show a witness a number of photographs, and ask him if he recognises any of them as being the criminal. There can be no objection to that. After all, it is just a specialised form of identification parade, and perfectly good practice, provided that the same dangers and precautions are borne in mind.

For example, the photographs should bear no superficial markings, such as C.R.O. numbers or the like, which would serve to help the witnesses, by indicating a criminal history, in picking out the suspect's picture. Nor should the witness be allowed to handle the pictures if they bear any such markings on the back. The best way of carrying out such an identification is probably the album, each page containing eight or ten frames, into which standard-sized photographs can be slipped; the identifying witness is given the book, and looks through the pages until he recognises the man concerned. But failing that, it is perfectly satisfactory to spread the photographs out, in regular order and evenly spaced, on a clear table, so that the witness may get a good view of them.

As to the number of photographs to be used, the usual number is eight or ten—as in corporeal parades. After the identification has been completed, the photographs used should be collected together and kept, so that they can be produced later in court if necessary to rebut any suggestion that the photograph of the suspect was unfairly distinctive in any way.

So much for photographs when used as a means of identification. It is when photographic identification is combined with corporeal identification that difficulty may arise. Obviously, the action taken by the police in *R.* v. *Dwyer and Ferguson* was wrong; it destroyed the value of the subsequent identification parade, without amounting in itself to a satisfactory form of identification. But if the witness is shown a series of photographs, and selects that of the suspect, can he usefully be asked later to take part in the resulting identification parade?

It is sometimes said that such corporeal identification is quite without value. This view probably comes from a misunderstanding of what the Lord Chief Justice said in *R.* v. *Dwyer and Ferguson.* After describing the correct procedure of showing the witness a number of photographs, letting him select that of the suspect, and then using him as an identifying witness at a parade, he said: "It is quite evident that . . . the witness . . . is not a useful witness." At first glance this might justify the above point of view. But he went on to qualify this remark by adding: "at any rate the evidence of that witness for the purpose of (corporeal) identification is to be taken subject to this, that he has previously seen a photograph." In other words, the subsequent corporeal identification is *not* absolutely valueless, but merely diminished in value by the witness having picked out a photograph; and, in any case, the original identification by photograph is unimpaired in value.

Indeed, it is clear from other cases that there is nothing wrong in a witness taking part first in a photographic identification, and later in an identification parade. In *R.* v. *Haslam* (1925) 19 Cr.App. R. 59, Lord Hewart C.J., after agreeing that it was indefensible to show a witness, before he goes on an identification parade, a photograph of a man already in custody, went on to say that no criticism could attach to police if, before making an arrest, they showed photographs to a witness who afterwards attended an identification parade. Or again, in *R.* v. *Hinds* [1932] 2 K.B. 644, in which a witness picked out the suspect's picture from a series, and later picked out the suspect at an identification parade, the trial judge, Avory J., did not warn the jury as to the diminished value of the corporeal identification. At the Court of Criminal Appeal, Humphreys J. held that it was not necessary so to warn the jury, and that there was ample evidence of identification which the jury had properly accepted as sufficient.

But whatever may be the correct view on this point, the general practice is, when there is more than one identifying witness, to use one of them to carry out a photographic identification in order to ascertain whom to arrest, and to use the rest for the resulting identification parade. The only evidence of identity that needs to be presented to the court is that based on the identification parade.

But what if there is only one witness as to identity, and the police have to use him for photographic identification if they are to have a prisoner at all? As we have seen, the value of the corporeal identification is subject to the remarks already quoted from *R.* v. *Dwyer and Ferguson*. And even though *R.* v. *Hinds* suggests that this limitation is not so severe as might at first appear, there is always the risk that the court might hold that the corporeal identification was in fact unduly influenced by the witness having first seen a photograph. Is it then safe to rely on the photographic identification? As has been said, this is a perfectly adequate form of identification ; and this would be true, were it not for one objection that has not so far been discussed in this paper. The inclusion of the suspect's photograph in the display would indicate to the jury that the man arrested as a result of the photographic identification has a police record. In *R.* v. *Dwyer and Ferguson* Lord Hewart C.J. said that to put the identification photograph of the accused before the jury amounted to " just as clear a statement to the jury that the prisoners had been previously convicted as would have been sworn evidence to that effect." Similarly, in *R.* v. *Wright* (1934) 25 Cr.App.R. 35, in which a witness said that he had picked out the accused from photographs in the " rogues' gallery at New Scotland Yard," the same judge commented that this sort of remark constituted a serious irregularity.

So here is a real dilemma for the police. If they say nothing about the witness having picked out a photograph before picking out the prisoner at a parade, they are being unfair to the prisoner by concealing a defect in the corporeal identification. If they do say something about it, they are being unfair to the prisoner by disclosing to the jury that he has a record. Which is the lesser unfairness? Can unfairness be avoided altogether?

The answer is perhaps implicit in Lord Hewart's remarks in *R.* v. *Wainwright* (1925) 19 Cr.App.R. 52: " It may well be that if counsel for the defence takes a certain course or asks certain questions, police photographs may have to be produced to the jury. But it is unheard of that police photographs, and the identification of a defendant by means of them, should be put forward by the prosecution as part of its evidence-in-chief." The second sentence of this quotation echoes the same judge's comments in *R.* v. *Dwyer and Ferguson* on the inference to be drawn from the possession by the police of photographs of the accused. This clearly indicates that it would be fatal for the prosecution to take the initiative in disclosing that they possessed photographs of prisoners.

In *R.* v. *Wattam* (1941) 28 Cr.App.R. 80, however, this strict view has been modified. The trial judge, Croom-Johnson J., said: "You must not assume that there is anything untoward in the policeman consulting a book of photographs . . . you must not assume against the accused man that it was a book of photographs of convicted persons or known thieves or anything of that sort." This view was approved when the case reached the Court of Criminal Appeal.

But despite this modification, the police would do well to avoid initiating the disclosure to the jury of the existence of police photographs of the accused—unless, indeed, "counsel for the defence takes a certain course or asks certain questions." The practical solution to all this, therefore, would be for the prosecution to warn the defence privately that photographs had been used, and thereafter say nothing about it in evidence. If the defence raise the matter, they will have few grounds for complaint.

The conduct of the parade

To get back to the identification parade itself, there is no specified number of men among whom the suspect is to be placed. The Home Office letter referred to above advises eight or more. Some forces take this as meaning eight; others have ten or twelve. But whatever number is the rule of the force, the officer in charge of the parade should aim at having one or two extra men handy, so that if the suspect objects to any of the men standing with him, the final number can still be not less than eight. The guiding principle in this respect, as in all others, is, not to make the identification as difficult as possible, but to prevent suggestions that it was made too easy. Exactly the same consideration applies to the number of photographs to be used in a photographic identification.

The men chosen to stand with the suspect must be as far as possible of the same age, height, general appearance and class of life as the suspect. Here, again, is a warning against making the suspect distinctive by the circumstances surrounding him; it would be unfair to put a suspected clergyman up for identification with eight labourers in working clothes; but it is a warning more easily given than followed. In a town it should not be difficult to find eight or ten men generally similar to the suspect, but in country districts, where, say, a negro or a Chinese is suspected, it may be quite a problem to collect eight other negroes or Chinese. It may then be necessary to remove the parade to the nearest centre of population, or even to resort to informal identification.

Another difficulty that may arise in a thinly populated area is that the members of the parade may be well known to the witnesses. As has been said, this would vitiate the identification, and so, where this possibility exists, the members of the parade may have to be recruited and brought from farther afield, or the parade moved elsewhere. And, of course, police officers should never be used in a parade unless, indeed, it is a case in which a police officer is suspect.

As has been pointed out, the witnesses should recognise the suspect by his physical peculiarities. But this does not extend to such peculiarities as having a wooden leg, only one eye, or similar abnormalities. If, therefore, the suspect has some abnormality of this kind, which cannot be countered by finding other men similarly distinguished, the parade should be conducted in such a way that the abnormality is concealed—for example, by lining the men up behind a counter, or by issuing eye-patches all round; such a thing as a missing arm could be dealt with by requiring all the members of the parade to place an arm inside their jackets. Such expedients, however, may raise more difficulties than they resolve; *e.g.*, see the *Police Review*, Vol. 63, p. 497, for a case where, as the suspect had to wear powerfully lensed spectacles, all the members of the parade were issued with similar spectacles.

As to dress, it is generally desirable that the suspect should wear the clothes in which the witnesses first saw him. The other members of the parade should be wearing similar clothes, as far as possible; such measures as issuing boiler suits or overalls borrowed locally will be familiar to most experienced police officers.

The members of the parade having been thus selected, their names and addresses should be recorded. The reason for this is the same as that for retaining the photographs displayed in an identification by photograph. If an allegation is later made that the members chosen were such as rendered the suspect unfairly distinctive, the officer in charge of the parade is, at a pinch, able to produce the actual members for the court to see.

Their identities recorded, it remains to assemble the members of the parade in the place where the parade is to be held. It should be a well-lighted yard or room, with plenty of space, provided with at least two unconnected entrances, and capable of effective control from within by the officer in charge of the parade.

Some difference of opinion seems to centre on the means whereby the suspect and the other members of the parade are brought together. Should the other members be assembled first in the parade place and the suspect then introduced? Should the suspect be there first, and then the other members allowed in? Or should the suspect be slipped in unobtrusively among the members as they enter? The point seems to be that, if the other members are made aware which is the suspect among them, they will be unable to avoid giving some sort of involuntary indication to the witnesses. But the *pros* and *cons* seem so evenly balanced that perhaps it does not matter much which way is used. And, in any case, as will be seen in a moment, it is impossible to prevent the members realising which is the suspect before many minutes have elapsed.

However the point is dealt with, the members should be lined up and the suspect asked if he has any objection to any of the members; any person so objected to should be released, being replaced by one of the " reserves," if otherwise, the total number on parade, including the suspect, would be reduced below nine. The suspect should then be allowed to take up any position in the line that he chooses. The officer in charge of the parade should take up a controlling position in front of the line, from which he should transact all the business: he should make a note of the suspect's position. Indeed, it is best to record the position of every member of the parade and any changes that are made throughout the proceedings.

As has already been pointed out, the witnesses should be segregated in such a way that they can have no opportunity of seeing any of the preparations for the parade; they should be given no chance of seeing either the suspect or the other members of the parade before they are all lined up ready for the identification. The ideal arrangement is for them to be assembled by an officer not attending the parade itself, in a room leading into the parade space, and for them to be called in one by one to the parade by another assisting officer, who should remain throughout in the view of the parade; they should not be summoned by sending an officer out of the parade space into the waiting room. Thus, no officer who knows the descriptions or the positions of the suspect or the other members can be said by the suspect to have had a chance of warning the witnesses.

Officers in the case may, as has been said, be present with the permission of the officer in charge of the parade—as, indeed, may any other person so authorised, such as a senior officer or officers under instruction. But it is obviously safer to keep such an audience to a minimum. Furthermore, in addition to taking no part in the proceedings, they should be required to stand well out of the way, as far as possible away from the witnesses' entrance, but in front of the line; and they should not be allowed to move about, or leave until the last witness has entered the parade space.

The first witness, then, having been called in by an assistant standing in the parade space, should be audibly instructed by the officer in charge of the parade, in such a way that the suspect can hear what is said, to move along the line, scrutinise each person, and touch any man he recognises.

Some doubt is sometimes expressed about the necessity to touch the identified person. It is claimed that this constitutes an assault, and that some other indication would serve as well. There is little substance in the point, however. If it is an assault, it is a trifling one; *de minimis non curat lex*. On the other hand, touching is the most unequivocal and positive way of conveying to the suspect and everyone else exactly who it is that the witness has recognised. And this ought not to be left in any doubt. A vague or inconclusive gesture and mutter, that has to be elucidated by a question such as "Is *this* the man you mean?" is obviously a weakness that an alert defence will make the most of. As was said in 8 *Journal of Criminal Law* at p. 165, in a comment on the unreported case of *R.* v. *Goldfine*, heard at North London Magistrates' Court on June 16, 1944, in which the witness walked away from the parade without having given any indication of recognition, but afterwards said something to the police as a result of which the prisoner was charged: "The open physical touching of the person picked out at an identification parade does add to the value of the identification in that it negatives the possibility that it was aided by anything seen or done after the parade."

The importance of the point of everything material being clearly seen and heard by the suspect cannot be over-emphasised. If the witness, for example, makes any request or observation out of the hearing of the suspect—a thing that he ought not to be encouraged to do, of course—the officer in charge of the parade should repeat it loudly enough for the suspect to hear, and give his reply in the same way. Moreover, any such request or comment—indeed, all the details of the parade—must be noted down, as also should any remark or reply by the suspect. Some force instructions make it a rule that any remark by the suspect should be read out and the suspect invited to sign it; it may be thought, however, that the police may be making a rod for their own back by doing this, and that it would be enough merely to note it down.

All reasonable requests of the witness should be complied with if possible, particularly if they are such as will help him to make a fair identification. For instance, if the witness wishes it, the parade might be required to take off their hats, or put them on, or to walk, or to speak—identification by voice is not unknown in the courts: *R.* v. *Keating* (1909) 2 Cr.App.R. 61. If the witness asks to see the parade from the rear, however, this should not be achieved by requiring the parade to turn round; both the officer in charge of the parade and the witness would then be out of the view of the suspect. The correct course to take would be to get the witness to walk along the rear of the line, so that the suspect can see the officer in charge of the parade, and, indeed, all the police present.

As each witness finishes his identification, he should be ushered out of the parade place into a different room from that in which the other witnesses are waiting. Before the next witness is called in, the suspect should be asked if he wishes to change his place in the line; it is often found that, for some reason, suspects who have been picked out will want to change, while those who have not will want to stay put. If he changes positions a note should be made of his new position.

The next witness is then called in, and the same procedure gone through, and so on, until all the witnesses have seen the parade. The suspect should then be asked if he is satisfied with the parade, a note being made of any reply he makes.

The members of the parade should then be allowed to leave. As they are all volunteers, they have no claim to any expenses, and in some forces they get nothing; in others, however, small gratuities, of a shilling or two, are given. It is said that it becomes increasingly difficult, in an era of full employment, to find sufficient people with the leisure and inclination to help the police in this way, and it may be that the reward will have to be increased in due course.

After the parade is over, a full report is usually required from the officer in charge of the parade. Many forces provide a form for completion, allowing for entries of all relevant details of action at the various stages. Such a form must be of great value in guiding the officer in charge along the right lines, particularly where parades are infrequent occurrences. But no form can cover every point and all officers responsible for the conduct of identification parades should bear in mind the principles behind the form. There is little law on the subject. The procedure has been hammered out by the police in past years, out of common sense and fairness. The minute percentage of parades that have ever been questioned in the courts shows that the principles evolved have been sound ones. Only by constant attention to these principles can the " exemplary fairness " demanded by Lord Hewart C.J. be ensured. And, what is no less important than fairness to the prisoner, only in this way can the police ensure that their evidence of identification be accepted by the courts, and that the guilty do not escape justice.

Summary Trial of Minor Offences

By V. Worrall, *Barrister-at-Law*

In October, 1954, a Departmental Committee under the chairmanship of Sir Reginald Sharpe Q.C. was set up to consider what changes, if any, should be made in the law relating to the trial of minor offences in magistrates' courts with a view to saving the time of the courts and of witnesses without prejudicing the rights of the defendant, and in particular to recommend whether changes should be made:—

(*a*) to permit a defendant to enter a plea of guilty without appearing before the court;

(*b*) to permit of the easier proof of previous convictions where the defendant does not appear;

(*c*) to permit a monetary penalty, not in excess of an amount fixed by law, to be accepted in settlement of an admitted offence, without a hearing before a court, if both the prosecutor and the accused so wish.

The Committee published its report on July 15, 1955 (Cmd. 9524), and recommends that the law should be changed (1) to permit a defendant to enter a plea of guilty without appearing before the court where the offence is necessarily triable in a magistrates' court and the proceedings were initiated by a summons, and (2) to permit of the easier proof of previous convictions where the defendant does not appear.

The Committee by its terms of reference was only to consider the law relating to the trial of "minor offences," but such offences are difficult to define satisfactorily, and there were substantial differences between witnesses who appeared before the Committee on what constitute "minor offences." In proposing that the recommended changes should apply to all offences which are necessarily triable summarily, provided that the proceedings are initiated by a summons, the Committee wishes it to be distinctly understood that it is not suggesting that all these offences can properly be termed minor ones, nor that in all cases are the prosecution likely to apply for the charge to be disposed of in the defendant's absence, nor that the court will consent if they do so apply. From the Criminal Statistics of 1953, the latest year for which figures were available to the Committee, it would appear that, including cases in juvenile courts and offences arising under local Acts and by-laws, a total of some 600,000 offences a year would fall within the category of offences which are necessarily triable summarily.

Statistics submitted to the Committee by the Commissioner of Police for the Metropolis show the great waste of police time caused by the enforced attendance of police at the courts as witnesses. Between November 29 and December 3, 1954, 3,556 hours of police time were spent in attending magistrates' courts in the Metropolitan Police District in connection with 1,410 cases in which defendants pleaded guilty. This represents the equivalent of the full time of 89 policemen each day. In 993 of these cases, involving 2,372 hours, the defendant did not himself appear but sent a letter pleading guilty. Similar evidence was given from provincial centres.

Entry of a plea of guilty

With regard to the first of the above two changes in the law which it recommends, the Committee proposes:—

(i) That the defendant be permitted to inform the court in writing that he desires to enter a plea of guilty without appearing before the court; and that, if he does so, such plea shall (subject to the safeguards mentioned below) be for all purposes treated as if it had been entered by a defendant who had appeared before the court.

Section 13 (3) of the Magistrates' Courts Act, 1952, provides that where a defendant appears before the court and pleads guilty, the court may convict him without hearing evidence. Where the prosecutor fails to appear, however, the court may not hear the case. Consequently, if the time of witnesses is to be saved it will be necessary to amend the law so that where the prosecutor is a person who witnessed the offence the case may go forward in his absence.

The Committee further proposes:—

(ii) That, to ensure that the rights of the defendant are not prejudiced, the following safeguards should be provided;

(*a*) In any case in which the prosecution initially decide that the proposed new procedure should apply, the defendant should be served, together with the summons, with a notice from the clerk to the justices inviting him to say whether he wishes to enter a plea of guilty without appearing before the court, and also with a concise statement of the facts of the case; and the defendant

> should be informed in clear terms that, in the event of his entering a plea of guilty without appearing before the court, no facts relating to the charge other than those appearing in the statement of facts will be laid before the court by the prosecution.

It was suggested to the Committee that the initial decision as to whether in a particular case the new procedure should apply should rest with the clerk to the justices, acting on principles laid down by the justices. But a difficulty would arise from the adoption of that course, because it is only the prosecution who have the knowledge on which the decision may turn: for example, the defendant may have previous convictions, and, in the light of those previous convictions, it may be apparent to the prosecution that the justices may wish to consider imposing a sentence of imprisonment if the defendant is convicted and that he should, therefore, attend.

It was also suggested that the statement of facts should be in the form of a certificate, admissible as evidence of the facts contained in it, on the lines of section 41 of the Criminal Justice Act, 1948, and that the method of service of the notice should be prescribed, and that service should be proved. The Committee do not consider that these steps are necessary, nor that it is essential that the form of notice or of the statement of facts should be prescribed by statute, although it may be that the former could be conveniently prescribed by rule. It suggests that the statement of facts should be a brief document, in plain language, prepared by the prosecution and signed by the police officer issuing it. If it is served with the summons, as is recommended, it will be sufficient for proof of the service of the summons to be given, and separate proof of the service of the statement of facts will be unnecessary. In Appendix V of the Report there are a suggested form of notice to be sent to the defendant with the summons and a specimen statement of facts.

At the hearing the statement of facts should be read out by or on behalf of the prosecution, though not necessarily by the informant. It will not be open to the prosecution to add to the statement of facts in court, in the defendant's absence, and if the justices require further information the case will have to be adjourned and the defendant so informed, in case he may desire to attend. The Committee do not think that this will often be necessary, once experience has been gained of the working of the system.

The second safeguard recommended by the Committee is:—

> (*b*) The defendant may, at any time before the hearing, withdraw a plea of guilty so entered.

They consider that the notice which informs the defendant of his right to enter a plea of guilty without appearing before the court should also inform him of his right to change his plea before the case is heard, but not subsequently. Naturally, if he leaves his change of plea to a late stage, the prosecution witnesses will not be present at court and an adjournment of the case will be necessary in order to enable them to be present, and the defendant who adopts such a course may, on conviction, possibly be ordered to pay costs which he would otherwise have escaped.

The Committee's third safeguard is:—

> (*c*) The court should at any stage of the trial have discretion, if it is of opinion that the ends of justice may not otherwise be met, or that the defendant's rights may in some way be prejudiced, to direct that the trial shall proceed according to the procedure as at present existing.

A further possible safeguard considered by the Committee was that the defendant should be notified of the maximum penalty to which he will be liable if convicted. Such notification is given in Scotland but the Scottish system covers more serious offences than those it is proposed should be covered by the new procedure in England and Wales. Under the present system many defendants are every year prepared to have their cases dealt with in their absence and they are not informed of the maximum penalty either by the court or the prosecution. The Committee see no reason to disturb this practice.

The Committee further recommends:—

> (iii) That where the court has accepted a plea of guilty which has been entered by a defendant without appearing before it, he shall not be sentenced to imprisonment, or disqualified for holding a driving licence, without being given a further opportunity to appear.

The exclusion of all offences punishable by imprisonment from the ambit of the new procedure, would mean the exclusion of some 320,000 offences a year for which only about 3,600 persons are sent to prison. The Committee are anxious that the scope of the new procedure should not be unduly limited but do not consider that a man should be sentenced to imprisonment in his absence. Therefore they recommend that where a court has accepted a plea of guilty from the defendant in his absence the justices should have no power to pass a sentence of imprisonment without first adjourning the case and summoning him to appear before them. The clerk to the justices would explain in a letter to the defendant that, having accepted the plea of guilty, the justices proposed to consider sentence at the adjourned hearing, that he was liable, in consequence of his conviction, to be sent to prison, and that, in his own interests, the justices considered it advisable for him to attend. If the defendant chose to stay away again he would have to abide the consequences, but it is not considered that many courts would proceed to pass a sentence of imprisonment in his absence, since, if the information is substantiated on oath and the court thinks it undesirable, by reason of the gravity of the offence, to continue the trial in the absence of the accused, they may issue a warrant for his arrest. It is thought that most courts would take the latter course. The warrant can in a proper case be indorsed for bail.

Similar considerations apply to the imposition of disqualification for holding a driving licence and a similar procedure is suggested where the court proposes to impose disqualification or disqualification will result from conviction unless the court find special reasons.

As regard the age of the defendant the Committee recommends:—

(iv) That the proposed new procedure should apply in cases where the defendant is a young person as it does in cases of persons of the age of seventeen years and upwards, but that no recommendation is made on the question whether it should apply where the defendant is a child, that is, a person under the age of fourteen.

It is not expected that use will be made of the new procedure in many cases involving young persons. The Committee did not feel able to make recommendations on the question whether it should apply to children without more detailed consideration based on further evidence.

Finally the Committee recommends:—

(v) That the proposed new procedure should be introduced without delay as a matter of urgency.

The Committee considered whether the new procedure should apply initially to a few categories of cases and then be gradually extended, but decided that the proper course to adopt would be to introduce it over the whole field simultaneously. Reasonable notice of the date of introduction would, of course, be necessary, if only to enable forms to be printed and other administrative arrangements made. The alteration in the law might be made by an Act of Parliament to come into operation on a date thereafter to be fixed, or a date of operation, sufficiently far ahead, might be fixed by the Act. But, owing to the extreme urgency of the matter, the Committee recommend that the period of notice of introduction of the proposed new procedure should be reduced to a minimum. They also point out that the effectiveness of the new procedure depends on how far it is adopted in the courts.

Proof of previous convictions

As regards the second of the two changes in the law recommended by the Committee, namely the easier proof of convictions where the defendant does not appear, it is proposed:—

(i) That the prosecution should be permitted to serve on the defendant a notice of previous convictions, if any; which convictions shall, if the defendant is convicted, be deemed to be admitted by him unless he appears in person and denies them.

Where the defendant is not present in court his previous convictions present a problem, since there is a danger of some other person's convictions being wrongly attributed to him, and most courts take the view that, in such circumstances, previous convictions must either be formally proved or ignored. Strict proof is hardly possible without a disproportionate expenditure of time and money, and in practice the result is that, by staying away, the defendant can prevent his previous convictions coming to the notice of the court, and may be repeatedly convicted, the court on each occasion being left under the impression that he is a first offender.

The Committee suggest that the new procedure which they propose, which is based on the procedure at present followed in both Scotland and Northern Ireland, should apply whether the defendant appears, in person or by counsel or solicitor, or not, and whether he pleads guilty or is convicted after a plea of not guilty.

The responsibility for serving the notice of intention to cite previous convictions should rest on the prosecution. The notice should normally be served at the same time as the summons or as soon after as possible and it must be clearly apparent that it was issued by the police and not by the court, so that the accused person will not think that the court has any knowledge of his previous convictions. A suggested form for the notice is included in Appendix V.

For the defendant's protection it is recommended:—

(ii) That, in order that the rights of the defendant may not be prejudiced, the court must be satisfied, before the previous convictions may be deemed to be admitted by the defendant, that the notice was served by the prosecution on the defendant, either personally or by registered post.

The Committee do not consider that the second of the three methods of effecting the service of a summons which are prescribed by rule 76 of the Magistrates' Courts Rules, 1952, namely, leaving it for the defendant with some person at his last known or usual place of abode, should be a permissible way of effecting service of a notice of previous convictions, since special precautions should be taken to see that a defendant's previous convictions do not come to the notice of any one other than the accused. The proof of service would appear to be covered by rule 55 (2) of the Magistrates' Courts Rules, 1952.

Finally, the Committee recommends:—

(4) That no change should be made in the law relating to the trial of offences in magistrates' courts to permit a monetary penalty to be accepted in settlement of an admitted offence without a hearing before a court.

The decision of the Committee was partly based on the consideration that if the system of accepting a plea of guilty from an absent defendant is introduced no further radical change should be made until it is seen how effective the new procedure is.

(5) The Committee advises that no further or other changes, beyond the two indicated above, should be made in the law relating to the trial of offences in magistrates' courts.

Aspects of Forensic Science

By Wilson R. Harrison, M.Sc., Ph.D.
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The Ball-Point Pen

The question has been put whether the ball-point pen, first introduced in quantity to the market but ten years ago, is here to stay. The answer is that no less than a quarter of a million new ball-point pens a week are now being manufactured in England and over fifty million refills consisting of nib-unit and reservoir are being produced every year. Production in America probably exceeds even these astronomical figures.

History

The history of writing materials, which extends back to the dawn of civilisation, is fascinating. Each age can be seen to have called forth both the inventors and the materials to cope with the ever-increasing demands for greater speed and facility in putting thought into the more permanent form of a document.

The earliest pen consisted of a section of reed used with a thick pasty ink made of some form of carbon such as lamp black or soot ground into an aqueous gummy medium. Writing with such an instrument is necessarily fairly slow and difficult—compared with the use of modern pens and inks—unless a script consisting essentially of short, straight lines is employed.

The invention, about the end of the sixth century, of the quill pen in which the ink is held by surface tension over the surface of the nib, and in which the width of the stroke may be controlled by the pressure, endowed the scribe with the ability to write shaded curved forms with speed and ease. These new pens could not be used effectively with the conventional thick pasty ink and therefore gave rise to the contemporary invention and slow development of inks using thin aqueous solutions of the iron salts of tannic and gallic acids which were the precursors of modern record inks.

The quill pen served its turn for centuries, but its effective use demanded a certain amount of manual skill on the part of the scribe in maintaining the points of the quill in good writing order. The replaceable steel nib, mass-produced of hard springy steel by mechanical methods at low cost, was an obvious nineteenth-century development which merely waited upon the necessary engineering skill and equipment before sweeping the quill pen virtually out of existence. The steel pen nib is so cheap that when corroded by the acid which is a necessary component of an iron-based ink it can be discarded.

When fountain pens were being brought into use about a century ago, this problem of metal nib corrosion had to be solved before fountain pens could be considered a practical proposition. It has been solved by two different methods; first the nibs of fountain pens are fashioned from non-corrosive metal such as a gold alloy whose relative softness and poor writing qualities are overcome by the application to the nib of hard-wearing tips, of an alloy usually based on one or more of the metals of the platinum group. The second method is the use of special non-corrosive fountain-pen inks which are essentially neutral aqueous solutions of synthetic dye-stuffs.

In all these cases it will be noticed that the widespread use of a new type of pen has waited upon the availability of a suitable ink for use with it. The success of the ball-point pen which is the latest development is no exception to this rule, in spite of the revolutionary nature of its construction and mode of action.

Development of the ball-point pen

The idea of using a rotating hard metal ball instead of the conventional nib for laying a trace of marking material upon paper actually dates from the last century, but it was not until recently that the problems concerned with the production of a suitable ink and the construction of the reservoir were solved to such an extent as to ensure its world-wide adoption in a few years after its introduction in 1945. In spite of the success achieved, work has gone on unceasingly to improve both the construction of the pen and the quality of the ink.

The mechanical difficulties associated with the manufacture of the nib-unit demand a high degree of engineering skill if reliable pens are to be mass produced. For example, the dimensions of the rotating ball have to be held within very close limits and great care and accuracy are essential in the fitting of it into its housing. This is why the whole ball-point assembly has to be scrapped when the ink reservoir has been emptied by use. By this time, both the ball and its housing have been subjected to such a degree of abrasive wear that the writing qualities of the ball point are no longer up to the required standard. This is the reason why any attempt to refill the unit once it has become emptied through use is deprecated by the manufacturers.

Although it is essential that the fit of the steel ball is sufficiently free to allow its rotating easily, the closeness between it and its seating must be regulated to give a gap of less than a thousandth of a centimetre to ensure the transfer of sufficient ink through capillary attraction. The normal diameter of the ball is one millimetre, but a more recent range of pens is provided with a smaller ball. The nib-unit is fabricated by machining from aluminium alloys or brass on automatic lathes, and in the " Biro " pen which is by far the most popular make, each nib-unit has no less than three ink-feed channels which are made in the ball seating by punching.

The ink used in ball-point pens

Very great difficulty has been experienced in obtaining an ink which is satisfactory under all conditions, particularly within the temperature range to which the pens are likely to be subjected because the viscosity of most liquids is considerably influenced by temperature change.

Although it is important that the ink should not seep through the gap when the instrument is not in use, which means that a narrow gap must be chosen, it remains essential that the passage of the ink through the gap must be continuous and uniform in use, so that the writing trace will be even. Added to this, there must be no undue accumulation of ink at the rim of the nib housing which might result in smudging.

Experience has shown that the viscosity of the ink is an important factor. High viscosity is necessary to prevent the breaking of the meniscus in the reservoir and to delay the breaking up of the film of ink on the exposed surface of the ball. This latter factor assists materially in obtaining a uniform trace in writing. There is, however, an upper limit to viscosity since increase in viscosity increases frictional resistance to the flow of ink in the reservoir which not only makes the carrying of the ink through the gap more difficult but hinders the rotation of the ball in its housing.

Inks used in ordinary fountain pens usually have a viscosity near to that of water whereas ink for a ball-pointed pen must have a viscosity at least a thousand times as high as that of water so that it resembles treacle in its consistency.

The main constituent of ink used in ordinary fountain pens is usually a volatile solvent such as water or alcohol so that the trace on the paper made by the fountain pen has to dry through evaporation. On the other hand, the ball-point pen requires an ink which has a low vapour pressure so that no appreciable evaporation may occur on the ball point with consequent encrusting of the ink. Furthermore, ordinary fountain pens do not require ink possessing good lubricating properties, whilst the ball-point pen depends both for satisfactory performance and working life on the lubricating characteristics of the ink. Another difference between fountain pen inks and that used in the ball-point pen is the percentage of colouring matter contained. It can be shown experimentally that whilst the amount of colouring matter in a dry ink line whether made by the ball-pointed pen or by a conventional pen is of approximately the same order, the consumption of marking fluid is about one hundred times greater for ordinary fountain pens than for ball-point writing instruments; this is why the ball-point pen ink must contain a very high proportion of colouring matter.

The foregoing makes a formidable list of requirements, so it is not surprising that a great deal of research has been necessary to bring the inks to their present state of perfection—a state which reflects much credit on the chemists and engineers who have worked on these problems.

The original ball-point pen inks were oily in nature and " dried " on the paper by the absorbtion into the surface of the paper of the very small amount of ink transferred from the surface of the ball. No true drying by loss of solvent as in the case of ordinary ink or by oxidation as with printing inks had to take place.

The original oily base consisted of olein, with or without an admixture of castor or similar oil. To increase viscosity colophony was added. No less than 15 per cent. of the ink consisted of dyestuffs. The dyes used were of necessity oil-soluble and had to be of high tinctorial power if the small amount transferred to the paper was to make a recognisable line. The necessity of having dyes oil-soluble limited the choice very severely and the early inks were unsatisfactory in many respects. The majority of the dyes were fugitive and the only dye which gave a good bright blue line —Victoria blue—was found to " strike " very badly on certain papers. " Striking " is the term given to spreading of the dye to such an extent that the line of writing loses its identity, rapidly degenerating into a blue streak, at the same time penetrating deeply into the paper.

Owing to the small size of the passages through which the ink has to flow, the addition of solid matter such as carbon black or prussian blue which would have materially improved both the appearance and the permanence of the inks had to be ruled out. All the constituents of the ink had to be soluble in the oily base.

For some time after the introduction of the ball-point pen, transference of writing from one document to another by means of an absorbent surface was considered a risk, as it was anticipated that signatures might be transferred in this way from one document to another. However, in spite of the theoretical possibilities of this being done, no instance of its having been accomplished with fraudulent intent is known to the writer.

In 1952, the position with respect to the ball-pointed pen inks was relieved by the substitution of the older oil-based inks by a new class based on polyethylene glycols of suitable viscosity. The new base allowed the use of a greatly superior range of dyes which could be dissolved to make more satisfactory inks than was possible with the oily base. The dyes used in these new inks are similar to those employed in the steam-setting inks used for printing. They adhere very firmly to the cellulose fibres of the paper and consequently cannot be transferred or smudged. Unfortunately from the view of the document examiner, writing with these new inks cannot so easily be removed from a document with a view to their being analysed by a chromatographic or electrophoretic procedure as was the case with the older inks.

Forgery and effect on handwriting

With the introduction of the improved inks the virtues of the modern ball-point pen as a general purpose writing implement are so many that there is no doubt that this revolutionary type of writing instrument has come to stay. Its convenience in use, the rapid drying of the writing which needs no blotting paper, and the ability to transfer heavy pressure when making multiple carbon copies without detriment to the writing qualities of the pen, means that the better qualities of both pen and pencil are combined in one instrument. Early fears that its use would facilitate forgery by transfer have proved to be groundless and the extended range of dye-stuffs now available ensures that the writing is more likely to be permanent, with little risk of striking or fading.

As might be expected, advantages such as these cannot be had without some price being paid. The ball-pen, unlike a conventional nib, produces a line whose width varies but little with pressure, hence it follows that shaded script cannot be produced and much of the beauty of good handwriting is lost when the pen-man is restricted to the writing of a line whose width and depth of impression cannot be varied. This affects the British pen-man more than his counterpart in those parts of the world such as the United States where the majority of systems of handwriting taught are practically devoid of shading.

There is no doubt that the general level of quality of handwriting has suffered a distinct decline during the past two generations; this may well be due to the development of the typewriter for business correspondence and the telephone for making personal communications which in the immediate past were for the most part carefully handwritten.

The advent of the ball-point pen will undoubtedly accelerate and confirm this deterioration of handwriting and it is almost certain that in the future, beautiful handwriting will, for the most part, be relegated to an art form, executed only as a medium of artistic expression in which connection the ball-point pen has no part to play.

Whilst the ball-point pen cannot reasonably be blamed for making easy or even possible the execution of a forgery by some process of transference, there is no doubt that the extended use of this writing instrument has rendered the task of the document examiner much more difficult.

In the comparison and identification of handwriting it is often the tiny inconspicuous details of the handwriting which are used to justify a positive conclusion regarding authorship.

When handwriting written with a conventional pen is observed under some slight magnification, a great deal of significant information concerning both the details of letter design and of pen-hold may be gleaned. An ink line formed by a conventional nib is a complex structure which reflects to perfection the way in which the pen was held and moved because every variation in pen-hold, pressure and movement is represented in the smooth continuous trace made by the liquid ink, which, on reasonably good paper dries in the place where it is deposited, with little spreading at the time, or any significant subsequent diffusion. In particular, pen-lifts and hesitations are recorded. These often prove of the utmost significance when a questioned signature is being examined, for the genuine signature of a practised writer is written fluently and without conscious thought and this fluency is reflected in the line quality of the writing made with the conventional pen and ink.

Any "drawing" procedure whereby a signature has been copied, is invariably reflected in the poor line quality of the finished product and this betrays in no uncertain terms the laborious process involved in the writing of a forgery. Any retouchings or additions are likewise exposed in magnification.

When the trace made by the ball-pointed pen is magnified, it resembles an irregular streak broken in many places particularly when the writing is done towards the end of the life of the refill. The presence of a break in a line made by a ball-pointed pen is, unlike a similar break in a line written with a conventional pen, by no means an indication that the writing instrument has been lifted from the paper. Consequently if any additions or retouchings are made to a signature written with a ball-pointed pen it is usually impossible to demonstrate their existence.

The effect of the foregoing is that, providing a forgery is made with some care and a ball-pointed pen is used, it is impossible to glean any positive information as to how the pen was held or the speed with which it was used.

In many respects the ball-pointed pen may be regarded as an ink pencil. No one would think of using a pencil to make a signature on an important document, for pencil-written signatures to important documents are invariably regarded with some suspicion because of the ease with which they may be forged.

If signatures written with ball-pointed pens are accepted as valid, then the task of the forger is greatly facilitated and in the majority of cases proof of the forgery would be impossible to demonstrate. For general purposes the ball-pointed pen has much to recommend it, but it has no place as an instrument with which any important signature is to be written.

Advocacy at Petty Sessions

By B. Fraser Harrison, *Solicitor*

Appeal

(*Continued from p.* 496)

Appeals from Assizes and Quarter Sessions

The mode of appealing against a conviction or sentence passed at Assizes or Quarter Sessions is outside the scope of these articles, but it may be of assistance to practitioners if brief reference is made to the subject.

The decision whether or not to appeal is counsel's and should not lightly be made, because the period the appellant spends in gaol, if he has been sentenced to imprisonment, between the sentence and the hearing of the appeal may not be permitted to count as a part of the sentence if the appeal fails.

By section 3 of the Criminal Appeal Act, 1907, a person convicted on indictment may appeal to the Court of Criminal Appeal:—

(a) Against his conviction on any ground of appeal which involves a question of law alone.

(b) With the leave of the Court of Criminal Appeal or upon the certificate of the judge who tried him that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the court to be a sufficient ground of appeal.

(c) With the leave of the Court of Criminal Appeal against the sentence passed on his conviction, unless the sentence is one fixed by law.

Time for making the appeal

By section 7 of the Criminal Appeal Act, 1907, notice of appeal (if the appeal is against conviction on a ground involving a question of law alone) or notice of application for leave to appeal against conviction on a ground involving a question of fact or mixed law and fact or against sentence, must be given within ten days of the conviction.

If the appeal is against conviction the time commences to run from the day on which the jury returned their verdict, whether or not the sentence or final judgment was passed on that day. When it is the sentence that is being appealed against the time commences to run on the day on which the trial judge passed sentence.

If for any reason the notices cannot be given within the proper time, leave may be applied for to extend the time unless the appellant has been convicted of murder, in which case no extension can be given.

When the appellant has been committed to prison the form of appeal or application for leave to appeal may be obtained from the prison governor. The Registrar of the Court of Criminal Appeal will also provide them.

The notice of appeal or of an application for leave to appeal, or notice of application for an extension of time must be signed by the appellant. If the appellant is a body corporate, the secretary, clerk, manager or solicitor of the body corporate may sign ; or if it was contended at the trial that the appellant was insane, the notice may be signed by his solicitor or someone acting on his behalf.

If the appellant is in prison the prison governor will send the notice to the Registrar of the Court of Criminal Appeal, otherwise his solicitor sends it.

Whenever possible an inexperienced solicitor ought to instruct counsel to settle the notice.

Apart from obtaining a transcript of the trial and drawing the brief nothing need be done until the hearing of the appeal or the application.

Should leave be given to appeal, no notice of appeal need be given in addition, as the notice of application for leave to appeal will be deemed to be a notice of appeal.

Appeal from quarter sessions sitting as an appellate court

If either party to an appeal to quarter sessions against a conviction by a court of summary jurisdiction or the sentence imposed upon such conviction believes that the quarter sessions' decision is wrong in point of law, by section 20 of the Criminal Justice Act, 1925, that party may make application to the court of quarter sessions to state a case for the opinion of the High Court on the point of law.

The application is made in writing and must be delivered to the clerk of the peace within seven days after the determination of the appeal by quarter sessions.

Domestic Proceedings

Introduction

For the purposes of the Magistrates' Courts Act, 1952, which governs most such proceedings in the magistrates' courts, domestic proceedings include:—

(a) Proceedings under the Guardianship of Infants Acts, 1886 to 1925.
(b) Proceedings under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949.
(c) Proceedings under section 3 or 4 of the Maintenance Orders (Facilities for Enforcement) Act, 1920.
(d) Proceedings under section 4 (3) of the Family Allowances Act, 1945, or under that subsection as applied by section 19 (2) of the National Insurance Act, 1946.
(e) Proceedings under section 3 of the Marriage Act, 1949.

Such proceedings do not include proceedings for the enforcement of an order made under any of the enactments mentioned in paragraphs (a) and (b) above or for the variation of any provision for the payment of money contained in such an order or in an order made or confirmed under the enactments mentioned in paragraph (c) above.

No more than three magistrates may compose a court trying any domestic proceeding and wherever possible the bench should include a man and a woman. Section 121 of the Magistrates' Courts Act, 1952, permits a stipendiary magistrate to sit alone at a domestic proceeding as elsewhere, but even these magistrates frequently prefer to have a lady magistrate sitting with them.

Preparation

Many persons whose marriages have failed, or who are mothers of bastard children, cannot pay large fees to lawyers. Established solicitors tend to dislike this type of work and it is in the domestic proceedings courts that most young advocates make their début.

Although the work is unrewarding, its preparation takes more time than a divorce case. If it is a bastardy summons, for instance, every meeting and conversation between the putative father and the mother, her friends and relations for a period of at least a year before the birth of the child and up to the moment the father sought his solicitor's advice has to be recorded in detail; were the client an intelligent business man the task would be difficult; when he is a stolid workman it is almost superhuman.

Matrimonial cases require no less investigation and take even more time. Unless adultery is alleged, no particulars of the offence are given; some minor tiff that the husband has forgotten may be produced as an act of gross cruelty; the whole case may turn on the fact that the wife called at her mother's house every Monday night—a detail so commonplace that the wife never thought fit to tell her solicitor about it.

Add to these difficulties the fact that the parties are as bitter as only a husband and wife who have quarrelled can be. No witnesses are more partisan than in-laws, and they are unwilling to accept the most reasonable advice if it allows the other side the slightest gain.

All this means that if the case is to be properly prepared, very many tedious hours must be spent struggling to obtain coherent stories from the client and the witnesses.

Adjournments

Although domestic disputes are frequently conducted by the parties in person, if only one party is legally represented the magistrates will readily accede to a request for an adjournment to enable the unrepresented party to consult a solicitor.

Not only is this a waste of time for the advocate, but it means a loss of wages to his client, particularly if the latter has travelled some distance to court.

The adjournment may be avoided if the solicitor writes to his client's spouse, saying that he has been consulted and thus giving her an opportunity to see a solicitor before the trial.

Magistrates, probation officers, clients and advocates

Magistrates are rightly perturbed at the number of marriages which end in their courts; they therefore often adjourn cases to give one spouse, who proffers forgiveness and asks for another chance, an opportunity to remake the marriage. In doing this the fact that this spouse is sometimes morally and legally in the wrong and has everything to gain by postponing the trial may be overlooked.

Magistrates are permitted to adjourn a matrimonial case to give the probation officer a chance to reconcile the parties. Under section 59 of the Magistrates' Courts Act, 1952, if the probation officer is unsuccessful, he may make a report to the court when the case is again before the magistrates.

The probation officer has to supply each party with a copy of his report, the contents of which are limited by the section and the report is not evidence, although it may form the basis of questions. It is the probation officer's task to rescue marriages on the point of being wrecked and he may therefore well feel less sympathetic towards a spouse who refuses to consider his efforts, even although that spouse is legally in a strong position, and he may reveal that lack of sympathy in his report. It is an advocate's duty to see that his client is fully aware of the legal result of any action he may take. Therefore, if it seems that a client, who has expressed a desire to part from his wife and is legally in a position to do so, is about to be reconciled with his wife, his advocate should not influence his decision, but must advise him of the legal consequences of living with his wife, even for a suggested trial period. By doing this a solicitor may incur the displeasure of the bench, but, nevertheless, it is his duty to do it.

Procedure

It is usually the woman who plays the role of complainant, hence the use of the feminine pronoun throughout this section unless the man is specifically mentioned as the complainant.

A defendant is brought before the court in a domestic proceeding by means of a summons, which is issued upon complaint and served by the police. Most magistrates' courts have set days upon which applications for summonses are heard, and the complainant has to satisfy the magistrates that she has sufficient grounds for the summons to be issued, so it is necessary for the complainant to attend in person.

Unless the solicitor appearing for the complainant wishes to be present, there is no reason why a client should not make the application in person. If she does, it saves time and embarrassment if she is given a note of the summons she requires. Before applying for the summons the case ought to have been prepared for trial; this avoids advising the client to apply for a summons, say, for desertion, only to realise later that the most that can be proved against the husband is his wilful neglect to maintain her.

When the summons has been granted some courts inform the complainant of the date of hearing there and then; others notify her later. Whichever be the method the solicitor has to ensure that he is told so that he can warn the witnesses and counsel, if the latter is to be instructed.

Jurisdiction

Section 44 of the Magistrates' Courts Act, 1952, governs jurisdiction and provides: " Where no express provision is made by any Act or the rules specifying what magistrates' courts shall have jurisdiction to hear a complaint, a magistrates' court shall have such jurisdiction if the complaint relates to anything done within the petty sessions area for which the court acts or anything left undone that ought to have been done there, or ought to have been done either there or elsewhere, or relates to any other matter arising within that area."

The Trial

Should a defendant to a domestic proceeding fail to appear, the magistrates may, once they are satisfied that the summons was properly served, try the case in his absence or adjourn it; they may also issue a warrant. Before they may take this latter step, by section 47 of the Magistrates' Courts Act, 1952, the complaint must be substantiated on oath. If the defendant has been arrested under a warrant he may be remanded during any subsequent adjournment, but no warrant may be issued to ensure the defendant's attendance nor may he be remanded once he has given evidence.

Speeches

The order of speeches and the calling of witnesses is the same in a domestic proceeding as in a summary trial, except that the parties are known as complainant and defendant and not as prosecutor and accused.

(*To be concluded*)

Intention: Is it an Existing Fact?

By L. Craymer, *Barrister-at-Law*

R. v. Dent; Hunt v. Battersby

In the recent decision of *R.* v. *Dent* [1955] Crim.L.R. 501 the Court of Criminal Appeal shed light upon a portion of the law of " false pretences " hitherto obscure. The facts of the case were as follows: The appellant had carried on business with his father as a firm of pest destructors. He entered into several contracts with farmers to destroy the moles on their land for a year at a fee, part of which was paid to him in advance. At the committal proceedings it was alleged, *inter alia,* that the appellant was not carrying on a genuine business as a pest destructor, but the evidence being insufficient to support this allegation it did not appear in the indictment. Hence the prosecution were compelled to rely on a false pretence of more tenuous nature. The count in the indictment which is of immediate concern read "... by falsely pretending that he, on behalf of C. Dent & Sons, was then bona fide entering into a contract for the destruction of moles on land in the occupation of X for a period of twelve months, and that he [and they] then bona fide intended to carry out their obligations under the said contract, and that he [and they] then bona fide believed that they were and would be able and willing to carry out their said obligations."

The jury were directed that the task of the prosecution was to prove that the appellant had no intention at the time of entering into these contracts of fulfilling them, and that if the jury found that Dent had knowingly told a falsehood as to his present intention or state of mind then that was a sufficient false pretence to justify a verdict of Guilty. Devlin J., reading the considered judgment of the Court of Criminal Appeal (Lord Goddard C.J., Devlin and Donovan JJ.), did not think this a correct view of the law and quashed the conviction.

The rule laid down in *Dent* is that a promise or statement of intention as to future conduct which is not intended to be kept is not by itself a false pretence. This rule is subject to two qualifications: (a) the promise or statement of intention as to future conduct may be coupled with a false statement of existing or past fact and (b) a statement as to readiness and willingness to do an act may involve a false pretence that the promissor has power to do that thing.

The only case which was not considered in *Dent* was the comparatively modern decision of a strong Divisional Court in *Hunt* v. *Battersby*, reported only in *The Times* of April 15, 1920, and cited in Kenny, *Outlines of Criminal Law*, p. 284, to support the following: "It seems that even mere states of mind may perhaps be regarded as 'facts' within the definition of the offence; so that an indictment may lie against a man for obtaining goods by a false statement of his present intention to do a given future act."

In *Hunt* v. *Battersby* the respondent was entitled to a privilege order from a railway company which, when granted to him, afforded him the benefit of travelling at one quarter the normal fare. The benefit was also extended to his wife if he applied for a ticket for his wife and declared that such ticket was for her use only. He applied for and obtained an order for one ticket for himself and one for his wife, and then on the following day he attended the railway station with a woman other than his wife, purchased the two privilege tickets and set out for Doncaster races accompanied by the other woman for whose journey he used the ticket issued only for the use of his wife. The magistrates acquitted the respondent on a charge of obtaining by false pretences and the prosecutor asked that a case be stated to the Divisional Court. In the Divisional Court (Lord Reading C.J., Avory and Roche JJ.) the Lord Chief Justice said: "He declared that he intended to use it for his wife, which he knew was untrue at the time. That was the false statement of an existing fact. . . . I think . . . that the finding of the justices that the statement was as to the future and not a statement of existing fact also is wrong. . . ."

Avory J. was equally convinced: ". . . I prefer to state the false pretence in this case as being a pretence that the man who obtained this order then bona fide required tickets for the use of himself and his wife, leaving out any question as to what was the intention in his mind at the time. That is recognised at the present day as the false pretence of an existing fact, and the justices seem to have been confused by the fact that a man who represents an existing fact may also at the same time be making a promise that he does not intend to keep. The mere fact that he is making a promise which he does not intend to keep does not prevent what he says being the representation of an existing fact; . . ." Roche J. (as he then was) agreed, and the case was sent back to the justices with a direction to convict.

Hunt v. *Battersby* must, if it is to stand at all, be brought within the first qualification of the rule laid down in *Dent*. It is submitted that it can be so considered by saying that, at the ticket office, the respondent represented, by conduct, that he was bona fide entitled to two privilege tickets. This was a representation of existing fact. But the respondent well knew at the time of the purchase that he was not so entitled as he had obtained the privilege ticket order by making a false declaration, *i.e.*, that the second ticket was required for the use of his wife. The portion of the judgment of Avory J. quoted above, though not perhaps crystal clear, is wholly consistent with this interpretation.

To put the matter another way, Battersby made a false declaration for the purpose of obtaining a privilege ticket order and so was not rightfully entitled to the order. He proffered the order at the ticket office, together with the reduced fares, for the purpose of obtaining the tickets, representing by implication that he had fulfilled the condition necessary for the issue of privilege tickets, *i.e.*, that he had obtained the order by an honest declaration. This implied representation was the false pretence.

Avory J. used the words: " a pretence that the man . . . bona fide required tickets for the use of himself and his wife, leaving out any question as to what was the intention in his mind at the time." It may be asked how it is possible to consider a man's pretence as to his requirement while leaving out the intention in his mind at the time. It is the intention in his mind which makes the statement of his requirement either a pretence or plain statement of truth. The explanation is that the words " . . . leaving out any question as to what was in his mind at the time " must refer to his intention at the time of the purchase. Battersby made a false statement to procure the order, but that false statement being referable only to future conduct was not a false pretence. Nevertheless, the order had been improperly procured. Then at the time of the purchase Battersby acted as if the order had been properly procured and this was the false pretence.

A copy of the judgment of the Divisional Court (Lord Reading C.J., Avory and Roche JJ.) in *Hunt* v. *Battersby* delivered on April 14, 1920, is appended.

Judgment

Lord Reading C.J., after setting out the facts, continued: With regard to the merits, there is indeed little to be said. The ticket was obtained in consequence of the privilege order, and that it had been obtained in the first instance by a false pretence, which was a false pretence of an existing fact, it is rather too late to discuss, or to argue. The man presented himself with the intention in his mind at that time to use the ticket for another woman. He declared that he intended to use it for his wife, which he knew was untrue at the time. That was the false statement of an existing fact. Then, however, it is said by the justices that this false statement had not induced the clerk at the booking office to issue the ticket. That seems to be a fallacy, because in truth a doubt crossed her mind, of which the utmost that could be said is that there is not a trace, that she was not induced to issue the ticket on the faith of the statement; she was induced, as the case actually finds, on the faith of the privilege order. She was doing what it was her duty to do, unless there had been something in the nature of a clear admission by this man that he was committing a fraud. The mere fact that she suspected it was not material, and the whole question in the case is whether there is evidence in law upon which the justices could come to the conclusion that she was not induced to issue this ticket by the false pretences. I think there was none and that consequently that finding of fact is wrong, and I think also that the finding is wrong on the fact because there is no evidence in law to support it, and further that the finding of the justices that the statement was as to the future and not a statement of an existing fact also is wrong. I am therefore of the opinion that this appeal should be allowed, and that the case should be remitted to the justices.

Avory J: I agree that the case should be remitted to the justices to convict, and I prefer to state the false pretence in this case as being a pretence that the man who obtained this order then bona fide required tickets for the use of himself and his wife, leaving out any question as to what was the intention in his mind at the time. That is recognised at the present day as the false pretence of an existing fact, and the justices seem to have been confused by the fact that a man who represents an existing fact may also at the same time be making a promise that he does not intend to keep. The mere fact that he is making a promise which he does not intend to keep does not prevent what he says being the representation of an existing fact: and as to the finding of the justices, that the woman who issued the ticket did not believe that the respondent intended to use the ticket for his wife; in my opinion there was no evidence to support that finding and it was perfectly immaterial if there had been because the respondent had, by the false pretence, obtained an order which is in the nature of a contract between the railway company and himself under which they agree to issue to him two tickets, one for himself and one for his wife. This order is not only in a mandatory form to the booking clerk, but it is certified by an officer of the railway company, who certifies that the person whose signature appears upon it is entitled to receive privilege tickets to the number mentioned, and he authorises the same to be delivered upon payment of the price. Therefore there was an absolute contract obtained here by this man for these two tickets, and it is perfectly immaterial to my mind, what the booking clerk thought. However peculiar her thoughts may have been on this occasion, it is perfectly immaterial what she thought at the time she was, in obedience to this order, handing out the tickets to him. Therefore there was no evidence that the justices could hold that she was not induced by the false pretence to have issued the tickets, and it is clear that what was done in this case was done with intent to defraud, and therefore the justices ought to have convicted.

Roche J: I agree.

Practice and Procedure

Magistrates' Courts

The execution of witness warrants

It is not usual for serious difficulties to be encountered in obtaining the attendance of witnesses in magistrates' courts—even though the witnesses may not be enthusiastic about this duty of citizenship. If, however, it becomes necessary to issue a warrant to secure the appearance of a reluctant witness procedural snags may, in certain circumstances, frustrate its purpose. An instance of this kind occurred recently in a metropolitan magistrates' court when a defendant, charged with living on immoral earnings, desired to call as his witness the woman in question. She had disappeared from her address and the accused was able to satisfy the magistrate that, pursuant to section 77 (2) of the Magistrates' Courts Act, 1952, a warrant could properly be issued for her arrest. The accused was remanded on bail for a fortnight, but, as there seemed no guarantee that the police would be able to find and arrest the woman on that particular day, the warrant directed them to bring her before the court " forthwith."

Within four days the witness was traced, duly apprehended and brought before the magistrate then sitting. He was not the magistrate who was hearing the case in question, and he decided to remand the woman on her own recognisances to appear on the date to which that case had been adjourned. It was realised that no power can be found in any Act to remand on bail in such circumstances and, therefore, it was felt wiser not to require a surety to be found for the witness's appearance. It was hoped that the force of her own recognisance would bind her sufficiently, but this turned out not to be the case. The woman did not appear to give evidence when the defendant was next before the court. He insisted that she was vital to his defence and the magistrate accordingly further remanded him on bail and issued a fresh warrant against the witness. This time it directed the police to bring her before the court on the remand date. Unfortunately, by this time, she had vanished completely and she had not been traced when the day of the adjourned hearing arrived. The magistrate issued a third warrant and remanded the accused for a further four weeks, but he remarked that if the woman had not been arrested by then the defence would have to proceed without her. As there was no statutory authority for the recognisance taken of the witness it was decided that no proceedings should be taken with a view to estreating it.

It would have been difficult for the court to have taken effective steps to prevent the unsatisfactory situation which was created in this case. It is true that, though there is no power conferred by the Magistrates' Courts Act, 1952, to remand a witness on bail, section 93 enables any magistrate who issues a warrant " for the arrest of any person " to indorse it with a direction that the person shall, when arrested, be admitted to bail. An indorsement in appropriate terms on the warrant first issued in the case in question would have enabled the police to require the witness to find a surety for her appearance at the adjourned hearing of the charge. But if, as seems probable, she had been unable to find a surety, the police would have been faced with the prospect of keeping her in custody at the station for ten days until that date. This is the same situation that would have arisen if the warrant had directed them, without any provision as to bail, to bring the witness before the court on the day fixed for the further hearing of the charge. The warrant could, admittedly, have been issued in that form; but would the police have been satisfied that its terms were sufficiently clear to make it certain that they were authorised to keep in custody for such a period a citizen who, after all, had committed no offence? If they were not so satisfied they would undoubtedly have brought the woman before the court " forthwith " in any case for specific directions from the magistrate. And once she was before the court in this way the only answer could be that there was no power to give any more specific directions. Only if the same bench were available could the difficulty be met by arranging an adjourned hearing forthwith.

The prescribed form of warrant merely authorises the apprehension and bringing before the court of a witness; it says nothing about detention. The power to detain, if it exists, must be inferred from the practical necessities of the situation. It seems odd, in view of the importance that English law attaches to the liberty of the subject, that a person who is accused of no crime may be kept in custody, without first appearing before a magistrate, for what might well be a matter of weeks. It seems more likely that Parliament never envisaged the possibility that the police might not always be able to produce a witness exactly on the day required. If that be so, it is safer to give an interpretation to the statute which favours the liberty of the subject; unless there is certainty about a power to detain it is not worth risking possible proceedings for unlawful imprisonment. [A. E. Jones.]

Summary trial of minor offences

See the review of the Report of the Departmental Committee on p. 538 above.

Coroner's Court

Post-mortem examination report

The Home Office have issued Circular No. 100/55 dated June 21, 1955, amending the wording of the post-mortem examination report set out in the First Schedule to the Coroners Rules, 1953 (S.I. No. 205), and circulating a copy of the revised form of report. In addition to a change made in the entry dealing with the cause of death, a special space has been provided on the form to enable the pathologist to indicate to the coroner whether a histological or bacteriological examination is to be made. Coroners should make arrangements for reports to be submitted to them in the revised form as soon as possible, and in any case not later than January 1, 1956.

Summary Justice

Wild birds protection. Having eggs of wild birds which have nested in the British Isles in his possession and offering them for sale, and for selling them contrary to the Protection of Birds Act, 1954; fined £5 on summons for selling, £25 each on two summonses for offering eggs for sale, ordered to pay £50 costs; Gowland: Bromborough Magistrates' Court (*The Times,* July 20).

Midwives Act, 1951. Delivering his wife of a child contrary to the Midwives Act, 1951, s. 9; fined £3; Bingham: Gloucester Magistrates' Court (*The Times,* July 29; *Daily Telegraph,* July 29).

Monitoring. Partner in a firm of fire assessors, using wireless telegraphy apparatus, when unauthorised, to obtain information from messages sent out to certain fire services; fined £25, ordered to pay 10 guineas costs (previously fined £2 and 5 guineas costs for similar offence in September, 1954); Balcombe: Old Street Magistrates' Court (*Manchester Guardian,* July 19).

Failure to make return. Failing to send returns of information to the Furniture Industry Development Council; six companies fined £2 with £3 costs each, three companies absolutely discharged with £2 costs each; F. G. Roberts & Co., Ltd., and others: Bow Street Magistrates' Court (*The Times,* July 9).

Dropping leaflets from an aeroplane; fined £50; Perrin: Nottingham City Magistrates' Court (*Daily Telegraph,* July 27).

Piloting an aeroplane without a licence; fined £30; Carey: Beaconsfield Magistrates' Court (*Evening Standard,* July 26).

Driving offence. Man, aged 74, driving without due care and attention; fined £8, driving licence suspended for one month, ordered to take a driving test; Rixson: Slough Magistrates' Court (*Evening Standard,* August 4).

Driving offence. U.S. airman drunk in charge of a car when he had got into the back of the car " to sleep it off "; in the United States the police would have advised him to act as he did; fined £5, ordered to pay 3 guineas costs, disqualified from driving private cars for one year; Rogers: Southend Magistrates' Court (*Evening Standard,* July 26).

Driving offence. U.S. air force staff-sergeant, driving under the influence of drink; fined £150 (the equivalent of three months' pay) with the alternative of three months' imprisonment, licence suspended for twelve months; Richardson: Middlesex Quarter Sessions (*Evening Standard,* July 27).

Riding a bicycle on a footpath in Hyde Park and refusing to give a policeman her name and address; fined 2s. 6d. on the first charge, 1s. on the second; Crane: Marlborough Street Magistrates' Court (*Evening Standard,* August 2).

Railway travel. Travelling first class with a third class ticket when unable to find third class seats; fined £1 each; Swain, Bott, Bernando: Southend Magistrates' Court (*Evening Standard,* July 27).

Election offence. Youth, aged 20, using an unauthorised car to convey electors on the day of the general election; fined £5, disqualified from voting in elections for two years; Sugden: Uxbridge Magistrates' Court (*The Times,* July 19).

Election offence. Voting in more than one constituency in the general election; fined £50, no disqualification as the defendant honestly believed that he had two votes, one for his place of business and one for his residence; Duke: Oxford City Magistrates' Court (*The Times,* July 15).

Case and Comment

The reports of cases to which initials are appended hereunder have been specially prepared for *The Criminal Law Review* by the following reporters:—

HENRY PALMER, *Barrister-at-Law.*
J. D. PENNINGTON, *Barrister-at-Law.*

Bail—*Prisoner with bad criminal record*

R. *v.* WHARTON [1] (Court of Criminal Appeal: Lord Goddard C.J., Devlin and Donovan JJ.: July 6, 1955) (*The Times,* July 7, 1955).

W. was convicted at Manchester Assizes of robbery with violence and sentenced to five years' imprisonment. The offence was committed while W. was on bail in respect of another offence. He applied to the Court of Criminal Appeal for leave to appeal against his conviction.

Held, that leave to appeal should be refused. The applicant had committed this offence while on bail, and the court had said over and over again that, unless the justices felt real doubt as to the result of the case, men with bad criminal records should not be granted bail. It was no kindness to the prisoner. In the present case the only results were that somebody had been robbed and assaulted, and that W. now had to serve a sentence of five years' imprisonment in addition to his sentence for the original offence. [H. P.]

COMMENTARY. See Archbold, 33rd ed., 72–3; Stone, 87th ed., 45, note (*h*).

Bankruptcy—*Annulment—prosecution for offences*

DIRECTOR OF PUBLIC PROSECUTIONS *v.* ASHLEY [2] (Leeds Assizes: Byrne J.: March 14–24, 1955) (18 *Modern Law Review* 415).

The accused was charged, *inter alia,* with two bankruptcy offences, namely, with obtaining credit for more than £10 while an undischarged bankrupt contrary to section 155 (*a*) of the Bankruptcy Act, 1914, and with managing a business without leave of the court while an undischarged bankrupt contrary to section 187 of the Companies Act, 1948. Before proceedings were commenced against the accused the bankruptcy was annulled and his counsel submitted that these two counts were therefore bad in law. He contended that the Act of 1914 makes no provision as to the effect of annulment on criminal offences; section 162, which expressly provides that a discharge or scheme or composition with the creditors shall not exempt a debtor from liability for criminal offences makes no reference to annulment. Further, annulment may be granted either where, in the opinion of the court, the debtor ought not to have been adjudged bankrupt, or where the debts are paid in full; in the former case it would clearly be wrong to prosecute a man for an alleged bankruptcy offence, but no difference is made between the two cases.

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[1] The applicant did not appear and was not represented. The Crown was not represented.

[2] For the prosecution: *G. R. Hinchcliffe Q.C., H. C. Scott* (instructed by the Director of Public Prosecutions). For the defence: *Rudolph Lyons Q.C., E. Ould* (instructed by Pearlman & Rosen, Hull).

Held, that the indictment was good and that the annulment was no defence to the prosecution; if it were it would not be possible to prosecute a bankrupt who borrowed the full amount of his debts without disclosing he was a bankrupt and with such money paid his debts and then obtained an annulment.

COMMENTARY. It would appear that there is no reported case on this point. In *Bailey* v. *Johnson* (1872) 7 Ex. 263, a purely civil case, Cockburn C.J. said that the effect of annulment was "to remit the party whose bankruptcy is set aside to his original situation." Blackburn J., however, expressly abstained from giving any opinion as to whether the effect of annulment "is in every case to go back to the beginning."

See Archbold, 33rd ed., 748, 1337, 1345.

Evidence — *Admissibility — statement by witness while accused unconscious*

R. *v*. WATSON [3] (Court of Criminal Appeal: Lord Goddard C.J., Finnemore and Devlin JJ.: July 18, 1955).

W. was convicted before quarter sessions of being in charge of a car when under the influence of drink, and was fined £10 and his licence was suspended for two years. A witness gave evidence that one of W.'s companions had said: "He is all right; there is nothing the matter with him except he has had too much to drink." He appealed to the Court of Criminal Appeal against his conviction on the ground that the statement was inadmissible, because it was made at a time when W. may have been unconscious.

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[3] For the appellant: *A. L. Mildon* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *H. E. Park* (instructed by Stephens and Scown, St. Austell).

Held, dismissing the appeal, that strictly speaking, the statement of the witness was inadmissible, but there was so much other evidence that W. was under the influence of drink that it was not enough to influence the jury unduly. The court were of the opinion that no miscarriage of justice had taken place and the proviso to section 4 (1) of the Criminal Appeal Act, 1907, would be applied. [H. P.]

COMMENTARY. See Archbold, 33rd ed., 343.

Evidence—*Cross-examination of accused as to character—imputation on character of prosecution*

R. *v.* CLARK [4] (Court of Criminal Appeal: Lord Goddard C.J., Devlin and Donovan JJ.: July 4, 1955) ([1955] 3 W.L.R. 313; [1955] 3 All E.R. 29).

C. was convicted at Surrey Quarter Sessions on charges of breaking and entering and larceny. The evidence for the prosecution at the trial included that of two police officers, who said that C. had made and signed a statement which, if true, amounted to a confession. The officers were cross-examined on behalf of C. to the effect that the statement had been dictated by one officer and written down by the other, and that C. had signed it because he was frightened. The learned deputy chairman allowed counsel for the prosecution to cross-examine C. as to his previous convictions under section 1 (*f*) of the Criminal Evidence Act, 1898, on the ground that the nature and conduct of the defence involved imputations on the characters of the witnesses for the prosecution. C. appealed to the Court of Criminal Appeal against his conviction on the ground, *inter alia,* that cross-examination as to his character had been improperly allowed.

Held, dismissing the appeal, that, as C. had not merely denied that he had made the statement but had alleged that the police officers had concocted it, he had made a serious imputation on the characters of the prosecution witnesses. If the imputation had been true it would have amounted to a conspiracy to defeat the ends of justice. A mere denial of the police officers' evidence or even, perhaps, an attack on their evidence in the case, would not have rendered the accused liable to be cross-examined as to his character; but an attack on the conduct of the prosecution witnesses outside their evidence in the case does make the accused so liable. This was laid down by the case of *R.* v. *Jones* (1923) 17 Cr.App.R. 117. The cross-examination of the police witnesses fell within section 1 (*f*) of the Act, and, accordingly, the cross-examination as to previous convictions had been properly allowed.

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[4] For the appellant: *Robin Simpson* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *B. Stuart Horner* (instructed by Wontner & Sons).

[H. P.]

COMMENTARY. The Criminal Evidence Act, 1898, s. 1, provides: "Every person charged with an offence . . . shall be a competent witness for the defence at every stage of the proceedings . . . provided as follows: . . . (*f*) A person charged and called as a witness in pursuance of this Act shall not be asked, and if asked shall not be required to answer, any question tending to show that he has . . . been convicted of . . . any offence other than that wherewith he is then charged . . . unless . . . (ii) . . . the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution."

A matter of some difficulty was raised in this case. Counsel argued that if the cross-examination were upheld it would simply mean that a prisoner can never deny a statement. Lord Goddard C.J. considered this point in some detail and sought to distinguish those cases when cross-examination as to character should be allowed. He said: "I do not want to make any joke about the matter or to put it otherwise than perfectly seriously, but one knows well that police officers are regarded as fair game for cross-examination and to make charges against, and I do not believe that any judge would allow a roving cross-examination into the prisoner's past merely because he said, 'The police constable is a liar,' or 'The police constable is not telling the truth'; for all he is doing is pleading not guilty with emphasis, or, as Darling J. said in *R.* v. *Rouse* [1904] 1 K.B. 184, that is 'merely an emphatic mode of denial.' It is quite another thing to make the suggestion against police officers that they have been conspiring together to defeat the ends of justice. . . . I would say that . . . if a prisoner, having signed a statement to a police officer and having put his signature as they always do in two places, one at the end of the caution and one at the end of the statement, alleges that the police have concocted the statement, he does so at the risk of having his character laid bare, if he has a character which it is his wish to conceal, because clearly, if misconduct is to be attributed to police officers, the jury is entitled to know the character of the man making the imputation; and it is not to be thought that the man who is making the imputation, if he has a string of convictions, stands in the same position as an inspector of police or any other officer who must be a man of good character."

See Archbold, 33rd ed., 484, 488, 491 *et seq.*

Evidence—*Police evidence as to character.* See R. *v.* WHITBY, p. 578, below.

Evidence—*Statement made to police—denial of.* See R. *v.* CLARK, p. 567, above.

Evidence—*Post Office savings book—prohibition against disclosure of contents*

R. *v.* UNGER[5] (Central Criminal Court: Barry J.: July 6, 1955).

During the course of the hearing of charges of conspiracy to defraud H.M. Inland Revenue and other related offences, the prosecution sought to call a witness from the Post Office to prove the contents of a Post Office savings book. The defence objected to the evidence, relying on section 4 of the Post Office Savings Banks Act, 1861, which restricts the disclosure by Post Office officials of particulars of depositors' accounts.

Held that, on the true interpretation of section 4, the prohibition against the disclosure of the name of the depositor and of the amount deposited referred only to voluntary disclosures by officers of the Postmaster-General, and did not prohibit the production of Post Office savings bank accounts under the compulsory process of a court of law; such production was clearly contemplated by section 9 of the Bankers' Books Evidence Act, 1879; accordingly, the evidence was admissible. [J. D. P.]

COMMENTARY. The Post Office Savings Banks Act, 1861, s. 4, provides: "The officers of the Postmaster-General engaged in the receipt or payment of deposits shall not disclose the name of any depositor nor the amount deposited or withdrawn, except to the Postmaster-General, or to such of his officers as may be appointed to assist in carrying this Act into operation."

Section 9 of the Bankers' Books Evidence Act, 1879, expressly includes "any post office savings bank" among the banks to which the Act applies, and thus makes copies of entries in Post Office savings books evidence of the matters there recorded.

In his judgment Barry J. said: "The words of section 4 are so general that if they were to be read without any qualification it seems to me highly doubtful whether even the depositor himself could insist upon the Postmaster-General publishing to a court the contents of his own Post Office savings bank account."

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[5] For the Crown: *J. H. Buzzard, Daniel Hollis* (instructed by Solicitor, Inland Revenue). For the accused: *Sebag Shaw* (instructed by Alfred Kerstein & Co.).

Evidence—*Receiving—onus of proof.* See R. *v.* HEPWORTH AND FEARNLEY, p. 576, below.

Grievous Bodily Harm—*Direction to jury—ignoring of defence in summing up*

R. *v.* OLLIFFE [6] (Court of Criminal Appeal: Hilbery, Slade and Barry JJ.: July 26, 1955) (*The Times*, July 27, 1955).

O. was convicted of wounding two Dutch seamen with intent to cause grievous bodily harm. At the trial O. gave evidence and put forward an explanation which, if the jury had accepted it, would have entitled him to be acquitted. O. appealed to the Court of Criminal Appeal against his conviction on the ground, *inter alia,* that the summing up was defective in that it did not deal with his defence.

Held, allowing the appeal, that the conviction could not be supported. The summing up did not even contain a mention of the fact that O. had given evidence; the evidence of O. and the defence put forward by him had been completely ignored. The summing up was also defective in failing to direct the jury as to the distinction in law between wounding with intent and for occasioning actual bodily harm. The conviction would be quashed. [H. P.]

Habeas Corpus — *Australian House of Representatives — imprisonment on Speaker's warrant—newspaper proprietor and editor*

R. *v.* RICHARDS, *ex p.* FITZPATRICK AND BROWNE [7] (Judicial Committee of the Privy Council: Viscount Simonds, Lords Radcliffe, Tucker, Cohen and Somervell of Harrow: July 14, 1955) (*The Times*, July 15, 1955).

F. and B., proprietor and editor respectively of an Australian newspaper, were committed to prison on warrants issued by the Speaker of the Commonwealth House of Representatives for breaches of privilege in publishing articles intended to influence and intimidate a named member in his conduct in the House and by deliberately attempting to impute to him corrupt conduct as a member for the express purpose of discrediting and silencing him.

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[6] For the appellant: *G. D. Black* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *Miss J. M. Southworth* (instructed by the Solicitor, Metropolitan Police).

[7] For the petitioners: *Sir Hartley Shawcross Q.C., R. J. M. Newton Q.C.* (Australia), *John Brunyate* (instructed by Pothecary & Barratt). For the respondent: *Senator John Spicer Q.C.* (Federal Att.-Gen.), *J. D. Holmes Q.C.* (Australia), *R. Else-Mitchell* (Australia), *H. A. P. Fisher* (instructed by Coward, Chance & Co.).

On applications by F. and B. for habeas corpus, the High Court of Australia took the view that section 49 of the Commonwealth Constitution transferred to the House of Representatives the same powers, privileges, and immunities as the United Kingdom House of Commons, and that since, if similar warrants were produced to a court in London as warrants of the House of Commons, they would be regarded by the court as conclusive that a breach of privilege had been committed, so here the Speaker's warrants precluded further inquiry. Accordingly, the court refused the applications. On a petition for leave to appeal:—

Held, refusing leave, that there was no ground for challenging the correctness of the judgment appealed against. [J. D. P.]

Larceny by a Trick—*Welshing bookmaker*

R. *v*. JONES (1948) 33 Cr.App.R. 11.

At the end of the judgment in *R*. v. *Dent* [1955] Crim.L.R. 501, the registrar reminded Lord Goddard C.J. of his judgment in *R*. v. *Jones*, above, in which the facts were very similar to those in *R*. v. *Dent*. Lord Goddard C.J. said: The court quashed the conviction, and rightly so, but dicta of mine as to the case being one of larceny by a trick when comparing it to the case of a welshing bookmaker were clearly wrong, as I have felt ever since I saw the case reported. It was an unreserved judgment and counsel had not been instructed on either side. The appellant had only appealed against sentence, but we saw that the conviction was wrong and quashed it.

Local Government — *Disqualification for sitting as member of council—schoolmaster*

JEFFRIES *v*. LAMB[8] (Lowestoft Borough Magistrates' Court: Chairman F. Bell, Esq.: July 7, 1955).

The defendant was charged with acting as a member of the Lowestoft Town Council when disqualified for so acting, contrary to section 84 of the Local Government Act, 1933. The case for the prosecution depended upon the following facts: the Borough of Lowestoft was a borough excepted under paragraph 4 of Part III of the First Schedule to the Education Act, 1944, from the scheme of divisional administration made by the East Suffolk County Council, the local education authority. The town council had made a scheme of divisional administration called the Borough of Lowestoft Scheme of Divisional Administration, 1945, which had been duly approved by the Minister of Education. Pursuant to this scheme the county council had made an instrument and articles of government for county secondary schools within the borough. The scheme and instrument provided for the establishment of governors of such schools, two-thirds of whom were to be appointed by the town council as divisional executive. The articles of government provided that assistant masters at such schools should be appointed to the service of the local education authority (the county council) by the governors in consultation with the headmaster, and that such appointments should be subject to confirmation by the divisional executive (the town council). The defendant was at the material time an assistant master at a secondary school in the borough having been appointed under these articles. He had been duly elected a member of the Lowestoft Town Council and while such an assistant master sat as a member of the council. It was contended by the prosecutor that the appointment of the defendant as assistant master amounted to the " gift or disposal " of the office by the town council or of a committee thereof for the purposes of section 59 (1) of the Local Government Act, 1933. It was contended by the defendant that upon the facts as stated the appointment was not such an office because under the terms of the articles the town council could merely accept or reject the choice of another body, namely the governors; they could not themselves take any active part in the choice. The defendant was appointed to the service of the county council as local education authority; the town council as divisional executive were the agents of the county council.

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[8] For the informant: R. B. Keefe, Solicitor, Norwich. For the defendant: *Michael C. Parker* (instructed by Kenneth Wormald).

Held, the defendant was guilty; he was sentenced to pay a fine of £5 and costs of £10 10s.

COMMENTARY. See Stone, 86th ed., 1513.

Magistrates' Court—*Case stated—form of*

GRIMMANT *v*. MCGUFFIE [9] (Q.B., Divisional Court: Lord Goddard C.J., Finnemore and Devlin JJ.: July 13, 1955).

M. was charged with being drunk in charge of a motor-car. R., the owner of the car, was charged with aiding and abetting. The justices found that M. and R., after having been to a private dinner, went to R.'s car; that R., by reason of the food and drink consumed was so ill as to be incapable of driving the car and he handed the car key, which unlocked the door and operated the ignition system, to M.; that M. assisted R. into the front passenger seat and then sat in the driver's seat and kept the key. The justices then set out the evidence apart from that on which they found the facts stated above. The justices stopped the case before the end of the evidence for the respondents, coming to the conclusion that M. was not in charge, and they stated a case as to whether that was a correct decision on the evidence.

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[9] For the appellant: *F. P. R. Hinchliffe* (instructed by Sharpe, Pritchard & Co., for N. B. Jennings, Birkenhead). For the respondents: *Stanley Rees* (instructed by Davis, Berthen & Munro, Liverpool).

Held, that the clerk to the justices was apparently quite unaware as to how a case stated should be drawn up. It was for the case to state the facts and the question of law. It was not for the case to state the evidence. The inadequate facts stated gave rise to the presumption that R. handed over the charge of the car to M., and the questions the justices had to determine were whether M. was in charge and, if so, whether he was drunk. The court would not deal with a case stated in such an unsatisfactory way, and would send it back for the justices to find the facts properly.

[C. J. Ellis, *Barrister-at-Law*.]

COMMENTARY. The Magistrates' Courts Rules, 1952, r. 64, provides: " A case stated by a magistrates' court shall state the facts found by the court and, unless one of the questions on which the opinion of the High Court is sought is whether there was evidence on which the magistrates' court could come to its decision, shall not contain a statement of the evidence."

See Stone, 87th ed., 99, note (*k*), 2587.

Malicious Damage—*Intent*

R. *v*. LOCKHEAD [10] (Warwick Assizes: Lynskey J.: June 30, 1955).

L. was charged with causing malicious damage to a plate glass window valued at £22, contrary to section 51 of the Malicious Damage Act, 1861. He had come upon a street fight in progress and had thrown a bottle in the general direction of the combatants. The bottle did not hit any of them but broke a window. In a statement to the police L. said that he did not know why he had thrown it.

Lynskey J., applying *R.* v. *Pembliton* (1874) L.R. 2 C.C.R. 119, directed the jury that there was no evidence that L. had formed the necessary intention to commit damage to property, or had shown a recklessness from which such an intention could be inferred. L. was found Not Guilty.

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[10] For the Crown: *A. W. M. Davies* (instructed by Blythe, Owen, George & Co., Coventry). For the accused: *James Ross* (instructed by Penman, Johnson and Ewins, Coventry).

[Miss J. Fisher, *Barrister-at-Law*.]

COMMENTARY. In *R.* v. *Pembliton* the accused was engaged in a street fight. He deliberately threw a stone at the other combatants, but it missed them and broke a window. It was held that he could not be held guilty of malicious damage since the jury found he had no intention of breaking the window.

See Archbold, 33rd ed., 914–916; Stone, 87th ed., 1809; Stroud's *Judicial Dictionary*, 3rd. ed., Vol. 3, 1719.

Merchandise Marks—*False trade description—wrong description of goods on receipt*

GRANT *v*. GRIFFITHS [11] (Q.B., Divisional Court: Lord Goddard C.J., Finnemore and Devlin JJ.: July 14, 1955) (*The Times*, July 15, 1955).

A customer walked into the shop of the defendants, who were retail clothiers, and asked for a flowered silk dress. She was shown a number of dresses, some of which were of silk, and told that the prices were from £10 to £12. The assistant then showed her a dress stating that it was a mixture of silk and rayon, and that the price was £5 5s., which the customer agreed to pay. The assistant wrote out a bill on which she described the dress as a " silk dress." The customer then paid and received the bill receipted. She did not read the description until she got home. In writing the description on the bill the assistant's only motive was to record the sale. The defendants were charged with applying a false trade description to the dress contrary to section 2 of the Merchandise Marks Act, 1887. The justices dismissed the information. On appeal:—

Held, dismissing the appeal, that although in certain circumstances a receipt could contain a false trade description, in the present case the trade description already given had properly described the dress as silk and rayon, and the receipt was not calculated to lead the customer to believe that the dress which she received was a silk dress. The court rather regretted that the case had been brought up before it, for it did not seem to raise any question of principle; the case had been decided on its own particular circumstances. [J. D. P.]

COMMENTARY. See Archbold, 33rd ed., 1351; Stone, 87th ed., 1580.

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[11] For the prosecution: *Rodger Winn* (instructed by Solicitor, the Board of Trade). For the defendants: *Kenneth Bain* (instructed by Haslewood, Hare, Shirley Woolmer & Co., for Sheppard, Norcott & Co., Bristol).

Murder—*Provocation—insanity*

R. *v.* WILKINSON [12] (Court of Criminal Appeal: Hilbery, Slade and Barry JJ.: July 26, 1955) (*The Times*, July 27, 1955).

W. was convicted at Sheffield Assizes of murder and sentenced to death. At the trial W.'s defence was (i) provocation sufficient to reduce the offence to manslaughter, and (ii) insanity. The provocation alleged was that the murdered woman rushed at him with a knife in one hand. It was unchallenged that W. had then inflicted the most terrible injuries on the woman. As to insanity, the psychiatrist called for the defence could only say that at the time when the offence was committed there was a strong possibility that he had a "schizophrenic episode," *i.e.*, some temporary illness of the mind. W. appealed to the Court of Criminal Appeal against his conviction on the ground of misdirection by the trial judge on the questions of provocation and insanity.

Held, dismissing the appeal, that as to provocation, there was no case to go to the jury sufficient to satisfy the test laid down by Lord Simon in *Holmes* v. *Director of Public Prosecutions* [1946] A.C. 588, namely, that even on the view of the evidence most favourable to the accused, there was no sufficient material on which the jury could form the view that a reasonable person so provoked could be driven, through transport of passion and loss of self control, to the degree and method and continuance of violence which here produced the death. Thus it was immaterial to consider whether the jury were properly directed on this question. As to insanity, the evidence fell far short of satisfying the McNaghten Rules. There was no evidence at all that W. was suffering from a disease of the mind or that he was suffering from a disease of the mind such as would render him incapable of appreciating what he was doing or, if he knew what he was doing, that it was wrong. There was, as a matter of law, no evidence to go to the jury on this question, and, again, it was immaterial to consider whether the direction to the jury was a proper one. [H. P.]

COMMENTARY. See "Provocation and the Reasonable Man," [1954] Crim.L.R. 740, 898; Archbold, 33rd ed., 936.

Rape—*Sentence*. See R. *v.* HOLMES, p. 578, below.

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[12] For the appellant: *E. J. Parris, R. H. Hutchinson* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *Sir Godfrey Russell Vick Q.C., Felix Denny* (instructed by the Director of Public Prosecutions).

Receiving—*Onus of proof—direction to jury*

R. *v*. HEPWORTH AND FEARNLEY [13] (Court of Criminal Appeal: Lord Goddard C.J., Finnemore and Devlin JJ.: July 18, 1955) ([1955] 3 W.L.R. 331).

H. and F. were convicted at quarter sessions of receiving a quantity of waste wool, and were sentenced to two years' and eighteen months' imprisonment respectively. They appealed against their convictions to the Court of Criminal Appeal on the ground of misdirection of the jury on the question of onus of proof. It was said on behalf of H. and F. that nowhere had the recorder used the words "doubt," "onus," "proof," "sure" or "explanation" in directing the jury; he had merely asked the jury if they were "satisfied" of certain facts.

Held, allowing the appeal, that it was not the formula that mattered, but the whole effect of the summing up. The jury should be told that they should feel completely satisfied or that they must feel sure that the case was proved. It may be that the court had been misled by *R.* v. *Summers* (1952) 36 Cr.App.R. 14. However, more than the word "satisfied" should be used, particularly in a receiving case, where the jury ought also to be told that, if they thought any explanation given by the accused might be true, it was their duty to acquit. The summing up in this case was not satisfactory. [H.P.]

COMMENTARY. See "The Direction to the Jury on the Burden of Proof," by Glanville Williams, [1955] Crim.L.R. 464.

Road Traffic—*Driving under the influence of drink—evidence.* See R. *v*. WATSON, p. 566, above.

Sentence—*Corrective training—corrective training in substance sentence of imprisonment*

R. *v*. McCARTHY [14] (Court of Criminal Appeal: Lord Goddard C.J., Devlin and Donovan JJ.: July 4, 1955) ([1955] 1 W.L.R. 856; [1955] 2 All E.R. 927).

M., who was on probation at the time of the offence, pleaded guilty before the Uxbridge justices to stealing a shirt and trousers. He was committed to Middlesex Sessions and sentenced to three years' corrective training. This was M.'s third offence and he had previously served a sentence of three months' imprisonment. He was 28 years of age. M. appealed to the Court of Criminal Appeal against his sentence.

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[13] For the appellant Hepworth: *A. M. Lyons Q.C., Edward Lyons* (instructed by Jack Levi, Leeds). For the appellant Fearnley: *Edward Lyons* (instructed by Jack Levi, Leeds). For the Crown: *J. S. Snowden* (instructed by W. H. Leathem, Town Clerk, Bradford).

[14] The appellant did not appear and was not represented. The Crown was not represented.

Held, that corrective training is in substance a form of imprisonment, and in passing sentence it is necessary to bear in mind that a sentence of three years' corrective training is a sentence of three years' imprisonment. Here, the appellant said that he stole the shirt and trousers in order to look respectable for a job. Had the court been considering the sentence before 1948 it would have considered a sentence of eighteen months' imprisonment appropriate. Corrective training was too severe a sentence in the circumstances and one of eighteen months' imprisonment would be substituted. [H. P.]

Sentence—*Corrective training—sentence of two years' insufficient*

R. *v.* BOTTOMLEY [15] (Court of Criminal Appeal: Lord Goddard C.J., Devlin and Donovan JJ.: July 4, 1955).

B. was convicted at Hertford Quarter Sessions of possessing housebreaking implements by night and sentenced to two years' corrective training. He appealed to the Court of Criminal Appeal against his sentence.

Held, that, although section 21 (1) of the Criminal Justice Act, 1948, allows sentences of corrective training between two and four years to be imposed, a sentence of two years is not sufficient. Such a sentence is reduced by remission to one year and four months, which is not sufficient for the benefits which it is hoped will accrue from corrective training. The sentence would, accordingly, be increased to one of three years' corrective training. [H. P.]

COMMENTARY. In this case the court once more stressed what it has said before: "We have more than once pointed out that a sentence of two years is, as a rule, inappropriate. A sentence of three years' corrective training, which means two years, is the least sentence which is likely to be of any use": *R.* v. *Grant* [1951] 1 K.B. 500.

Sentence—*Irishman sentenced to Borstal—bound over on condition he returned to Ireland*

R. *v.* DUNNE [16] (Court of Criminal Appeal: Lord Goddard C.J., Finnemore and Devlin JJ.: July 18, 1955).

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[15] For the appellant: *W. Fordham* (instructed by the Registrar, Court of Criminal Appeal). The Crown was not represented.

[16] The appellant appeared in person. The Crown was not represented.

D., an Irishman, had been convicted and sentenced to a period of Borstal training. On appeal against sentence to the Court of Criminal Appeal:—

Held, that there was no reason why D. should be kept in Borstal by English taxpayers. If he agreed [as he did] he would be bound over in the sum of £10 to be of good behaviour for the next five years. There would be a condition that he should depart immediately for Ireland under the supervision of the probation officer and not return to England for five years. If he came back within five years he would go to prison for three years. [H. P.]

COMMENTARY. See Stone, 87th ed., 295.

Sentence — *Rape — ten years' imprisonment increased to life imprisonment*

R. *v.* HOLMES[17] (Court of Criminal Appeal: Lord Goddard C.J., Devlin and Donovan JJ.: July 5, 1955) (*The Times,* July 6, 1955).

H. was convicted at York Assizes of the rape of a girl aged eleven and sentenced to ten years' imprisonment. The offence was committed in the presence of H.'s wife, who was convicted of aiding and abetting it. H. had previous convictions for malicious wounding and arson, and had spent two years in Broadmoor in respect of the latter offence. On appeal to the Court of Criminal Appeal against his sentence:—

Held, that this was a case of which it was difficult to speak with moderation except on the footing that the man was mentally unstable. The court had come to the conclusion that he should be put somewhere where the Home Secretary had a discretion as to when he should be released. The sentence would, therefore, be increased to one of life imprisonment. [H. P.]

COMMENTARY. See [1955] Crim.L.R. 386.

Sentence—*Sentence of imprisonment altered to corrective training —Prison Commissioners' report*

R. *v.* WHITBY[18] (Court of Criminal Appeal: Lord Goddard C.J., Devlin and Donovan JJ.: July 5, 1955) (*The Times,* July 6, 1955).

W. was convicted at Gloucester City Sessions of two charges of housebreaking and larceny and sentenced to seven years' imprisonment. Eleven other offences were taken into consideration. W. had previously served sentences of detention in an approved school and in a Borstal institution. The report of the prison commissioners stated that a sentence of corrective training might be suitable. W. appealed to the Court of Criminal Appeal against his sentence.

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[17] For the appellant: *Denis H. Robson Q.C., R. Rawden-Smith* (instructed by Payne and Payne, Hull). The Crown was not represented.

[18] The appellant did not appear and was not represented. The Crown was not represented.

Held that, although there were thirteen housebreakings to be taken into account, W. ought to be given one more chance before being sentenced to a long period of detention. Having regard to the Prison Commissioners' report, a sentence of four years' corrective training would be substituted for the sentence of seven years' imprisonment.

Per Lord Goddard C.J.: " The learned recorder had interrupted the police officer giving evidence as to character, apparently because he thought that the officer was going to say that W. had been associating with thieves. The court had said before (see [1955] Crim.L.R. 175) that that evidence is admissible provided that the officer can speak from his own knowledge." [H. P.]

Acts and Orders

Agriculture

POTATOES (REVOCATION) ORDER, 1955 (S.I. No. 1155): fully operative September 1, 1955. The Seed Potatoes Order, 1954 (S.I. No. 1336; [1954] Crim.L.R. 873) and the Ware Potatoes Order, 1954 (S.I. No. 986; [1954] Crim.L.R. 725), as amended, which imposed price and other controls, are revoked.

See TRANSFER OF FUNCTIONS (ANIMAL HEALTH) ORDER, 1955, below; REGULATION OF MOVEMENT OF SWINE (AMENDMENT) ORDER, 1955, p. 580, below.

Animals

TRANSFER OF FUNCTIONS (ANIMAL HEALTH) ORDER, 1955 (S.I. No. 958): operative August 1, 1955. Subject to certain specified exceptions all the functions of the Minister of Agriculture, Fisheries and Food under the Diseases of Animals Act, 1950, and Orders made, or having effect as if made, under that Act are to be exercised by that Minister and the Secretary of State for Scotland acting jointly. The main exceptions are functions relating to brucellosis melitensis, epizootic abortion, tuberculosis and warble fly infestation which are to be exercised by the Minister in England and Wales and by the Secretary of State in Scotland and functions relating to certain infectious diseases which are still to be exercised by the Minister throughout Great Britain.

SWINE FEVER (AMENDMENT) ORDER, 1955 (S.I. No. 996): operative July 18, 1955; REGULATION OF MOVEMENT OF SWINE (AMENDMENT) ORDER, 1955 (S.I. No. 1051): operative July 25, 1955; PROHIBITION OF LANDING OF SWINE FROM THE ISLE OF MAN ORDER, 1955 (S.I. No. 1069): operative July 20, 1955. Local authorities may make regulations controlling the movement of pigs whilst in any market, fair, auction, saleyard or place of exhibition in order to prevent the spread of disease.

Pigs may no longer be moved from a liveweight certification centre to a slaughterhouse without a licence. Fat pigs may be moved from premises in the occupation of or used by a pig dealer to a liveweight certification centre if a licence for such movement is obtained.

No pigs brought from the Isle of Man may be landed in Great Britain except pigs intended for immediate slaughter; pigs for slaughter may only be moved from a landing place under a licence granted by a veterinary inspector appointed by the Minister of Agriculture, Fisheries and Food and only to a bacon factory or slaughterhouse specified in the licence.

For penalties for contraventions of these Orders, see sections 79 and 82 of the Diseases of Animals Act, 1950.

Children and Young Persons

See CINEMATOGRAPH (CHILDREN) REGULATIONS, p. 585, below.

Customs and Excise

EXPORT OF GOODS (CONTROL) (AMENDMENT) ORDER, 1955 (S.I. No. 984): operative July 14, 1955. The consolidating Order of 1955 (S.I. No. 518; see [1955] Crim.L.R. 391) is amended, and changes made in those goods which require a licence for their export.

See PROHIBITION OF LANDING OF SWINE FROM THE ISLE OF MAN ORDER, 1955, above; GERMAN CONVENTIONS ACT, p. 581, below.

Food and Drugs

TRANSFER OF FUNCTIONS (FOOD AND DRUGS) ORDER, 1955 (S.I. No. 959): operative July 6, 1955. Functions of the Minister of

Agriculture, Fisheries and Food exercisable under the Food and Drugs Act, 1938, the amending Act of 1954 ([1955] Crim.L.R. 50) and the Welfare Foods (Great Britain) Order, 1954 ([1954] Crim. L.R. 947) are transferred to the Minister of Health. Functions of the Minister of Agriculture under section 23 of the Food and Drugs (Milk, Dairies and Artificial Cream) Act, 1950, are transferred to that Minister and the Minister of Health acting jointly. Functions of the Secretary of State and the Minister of Agriculture acting jointly under provisions of the Acts of 1938 and 1954 applying to Northern Ireland are transferred to these two Ministers and the Minister of Health acting jointly. Functions exercisable under certain sections of the Public Health Act, 1936, as incorporated with the food and drugs legislation by virtue of section 96 of the Food and Drugs Act, 1938, are redistributed between the Ministers of Health, Housing and Local Government, and Agriculture, Fisheries and Food.

Hire Purchase

HIRE-PURCHASE AND CREDIT SALE AGREEMENTS (CONTROL) (AMENDMENT) ORDER, 1955 (S.I. No. 1130); operative July 26, 1955. The Order of 1955 (S.I. No. 297; see [1955] Crim.L.R. 258) is amended. The principal changes are (1) an agreement may be varied by lengthening the period over which the balance due is payable up to the maximum period provided by the Order; (2) the minimum amount of deposit in respect of certain goods has been increased; (3) an agreement need no longer be limited to certain prescribed goods; if other goods are included in it a minimum deposit and maximum period for payment of the balance are provided in respect of those goods; (4) where goods are taken in part exchange the amount of the allowance which may be taken into account in calculating the deposit is such as may be reasonable in relation to the value of those goods; (5) the Order does not apply to cinema projectors of 35 mm. gauge or over, agricultural buildings and greenhouses, or goods disposed of to any person as equipment for a seagoing British ship registered in the United Kingdom, owned or chartered by him, other than a pleasure yacht or a ship not propelled by mechanical means.

For penalties for infringements, see regulation 92 of the Defence (General) Regulations, 1939.

International Law

GERMAN CONVENTIONS ACT, 1955 (4 Eliz. 2, c. 2): operative July 6, 1955. In respect of acts performed in the exercise of their official duties, immunity from legal proceedings is conferred on officials of the Arbitration Tribunal, the Supreme Restitution Court and the Arbitral Commission. Immunity from such proceedings is also conferred on a party appearing before the Arbitral Commission in respect of acts performed in the presentation of his case (s. 1 (1)). Diplomatic immunity may be accorded by Order in Council to certain members of the Arbitration Tribunal or Arbitral Commission (s. 1 (2)). The Perjury Act, 1911, applies to persons sworn as witnesses or interpreters in proceedings before the Arbitral Commission (s. 1 (3)).

The authorities of Her Majesty's forces may be authorised by the Admiralty, Army Council or Air Council to seize or detain goods in respect of which German customs laws have been contravened by certain persons serving with the armed forces of the United Kingdom, the United States of America or France, or by their close relatives (s. 2).

AUSTRIAN STATE TREATY ACT, 1955 (4 Eliz. 2, c. 1): operative July 6, 1955. The Queen has power to make such Orders in Council as may appear necessary for carrying out the Austrian State Treaty, which re-establishes an independent Austria. Such Orders in Council may provide that persons contravening their provisions shall be guilty of an offence and liable on summary conviction to a maximum fine of £100 or to not more than three months' imprisonment or both and on conviction on indictment to a maximum fine of £500 or to not more than two years' imprisonment or both.

EUROPEAN COAL AND STEEL COMMUNITY ACT, 1955 (4 Eliz. 2, c. 4): operative on a day to be appointed. Immunity from suit and legal process and inviolability of official residence are accorded to the chief representative of the High Authority of the European Coal and Steel Community and his family. Other members of the official staff of the Community are given diplomatic immunity in respect of things done or omitted in the course of the performance of their official duties. The chief representative may waive any immunity conferred on himself or any other person.

Local Government

See SWINE FEVER (AMENDMENT) ORDER, 1955, p. 580, above.

London

The following Order has been made detailing prescribed routes: S.I. 1955, Nos. 1000 (Wandsworth); 1145 (Westminster).

The following Order has been made prohibiting waiting: S.I. No. 1146 (Guildford Street, Chertsey).

Merchant Shipping

MERCHANT SHIPPING (LOAD LINE CONVENTION) (VENEZUELA) ORDER, 1955 (S.I. No. 960): operative July 8, 1955. Venezuela has acceded to the Load Line Convention.

Mines and Quarries

COAL MINES (TRAINING) (AMENDMENT) GENERAL REGULATIONS, 1955 (S.I. No. 972): operative July 16, 1955. The Regulations of 1945 (S.R. & O. No. 1217) are amended. The principal changes concern the issue of certificates, schemes for preliminary training, training at part production faces, supervision of persons working at the coal face, and the appointment of training officers.

For penalties for contraventions, see section 90 of the Coal Mines Act, 1911.

Northern Ireland

See TRANSFER OF FUNCTIONS (FOOD AND DRUGS) ORDER, 1955, p. 580, above.

Poisons

POISONS LIST ORDER, 1955 (S.I. No. 1134); POISONS RULES, 1955 (S.I. No. 1135): both operative August 15, 1955. The sale of methylpentynol is restricted.

Public Health

BARKING TOWN (PNEUMONIA) (REVOCATION) REGULATIONS, 1955 (S.I. No. 947): operative August 1, 1955. The Regulations of 1924 (S.R. & O. No. 614), which required notification to the medical officer of health of cases of pneumonia supervening upon measles, are revoked.

Road Traffic

MOTOR VEHICLES (CONSTRUCTION AND USE) (TRACK LAYING VEHICLES) REGULATIONS, 1955 (S.I. No. 990): operative July 25, 1955. The Regulations of 1941 (S.R. & O. No. 459), as amended, are consolidated with certain further amendments. The principal changes are (1) no load may be carried on any motor vehicle or trailer if it projects more than 1 foot laterally beyond the overall width of the vehicle or if the total width of the load exceeds 9 feet 6 inches; if it is not reasonably practicable to comply with these requirements notice of intended journeys must be given to the police; the regulation does not apply to the carriage of loose agricultural produce not baled or crated (reg. 75); (2) direction indicators on trailers constructed after July 1, 1955, must comply with prescribed conditions; additional indicators are permitted at the front of certain motor vehicles (reg. 22, Sched. II).

For penalties for contraventions, see reg. 77 of the Regulations and section 113 of the Road Traffic Act, 1930.

MOTOR VEHICLES (AUTHORISATION OF SPECIAL TYPES) GENERAL ORDER, 1955 (S.I. No. 1038): operative July 25, 1955. The Order of 1952 (S.I. No. 2173) is replaced with certain amendments. Subject to a number of conditions straddle carriers may be used for the purpose of demonstration or in the course of delivery on sale although they do not comply with the Motor Vehicles (Construction and Use) Regulations, 1955 (S.I. No. 482) in regard to their springs, overall width and overhang (reg. 9).

STREET PLAYGROUNDS ORDERS (PROCEDURE) REGULATIONS, 1955 (S.I. No. 1059): operative July 27, 1955. The provisional regulations of 1938 (procedure for submission and confirmation of orders prohibiting and restricting traffic on street playgrounds) are re-enacted with minor drafting amendments.

Scotland

Animals

See TRANSFER OF FUNCTIONS (ANIMAL HEALTH) ORDER, 1955, p. 579, above.

Police

POLICE (SCOTLAND) AMENDMENT REGULATIONS, 1955 (S.I. No. 1046): operative September 5, 1955. Provisions similar to those contained in the English Regulations (see [1955] Crim.L.R. 512), are made for Scotland.

Theatre and Cinematograph

See CINEMATOGRAPH ACT, 1952 (COMMENCEMENT IN SCOTLAND) INSTRUMENT; CINEMATOGRAPH (SAFETY) (SCOTLAND) REGULATIONS; CINEMATOGRAPH (CHILDREN) (SCOTLAND) REGULATIONS, p. 585, below.

Sea Fisheries

WHALING INDUSTRY (SHIP) (AMENDMENT) REGULATIONS, 1955 (S.I. No. 1001): operative July 13, 1955. The conditions attached to licences granted to ships to take and to treat whales are altered prohibiting the killing of blue whales in the North Atlantic Ocean and in part of the North Pacific Ocean.

For penalties for contraventions, see section 6 (7) of the Whaling Industry (Regulation) Act, 1954.

Theatre and Cinematograph

CINEMATOGRAPH ACT, 1952, INSTRUMENTS, 1955, COMMENCEMENT IN ENGLAND AND WALES (S.I. No. 1128); COMMENCEMENT IN SCOTLAND (S.I. No. 1124): both operative July 22, 1955. The Cinematograph Act, 1952, which amends and extends the Act of 1909, will come into operation on January 1, 1956.

CINEMATOGRAPH (SAFETY) REGULATIONS, 1955 (S.I. No. 1129); SCOTLAND (S.I. No. 1125): both operative January 1, 1956. Previous Regulations made under the Cinematograph Act, 1909, are revoked and replaced. The principal change is that the general requirements as to safety apply whether or not inflammable film is used; but additional requirements are made if such film or if television equipment is used. The Regulations are relaxed where cinematograph exhibitions are given in premises used only occasionally. The Regulations concern the provision of exits and staff, fire precautions, the structure of projection and rewinding rooms, film projectors, lighting and electrical installations and equipment.

For penalties for contraventions, see section 3 of the Cinematograph Act, 1909.

CINEMATOGRAPH (CHILDREN) REGULATIONS (S.I. No. 1131); SCOTLAND (S.I. No. 1138): both operative January 1, 1956. No child apparently under the age of five may be admitted to a cinematograph exhibition unless accompanied by and in the charge of a person who appears to have attained the age of sixteen (r. 1). No child apparently under twelve years old may be admitted to such an exhibition after seven in the evening unless accompanied by and in the charge of a person who appears to have attained the age of sixteen, where the film being shown has been shown earlier on that day on those premises (r. 2). Where an exhibition is organised wholly or mainly for children, special requirements are made as to the number of attendants over the age of sixteen who must be present (r. 3). The Regulations do not derogate from the power of a licensing authority to impose conditions in granting a licence under the Cinematograph Act, 1909.

For penalties for contraventions, see section 3 of the Act of 1909.

Letters to the Editor

Tenure of Colonial Judges

Sir,

I was very interested to read the letter of Harding J., published in your issue of the *Criminal Law Review* in June, regarding a statement I made concerning the tenure of office of Colonial High Court Judges in my article " The Trials of a Colonial Beak " published earlier in the year. Perhaps I should have qualified my statement by adding at the end of it " as far as I am aware." The case Harding J. cites is of course the one I had in mind and in that case Terrell J. was deprived of his office and his pension rights were prejudicially affected, by reason of the Japanese occupation of Singapore, a matter which could hardly be held to be the fault of the learned judge. Whatever the legal position might have been, the impression of most people on reading this case was that the Colonial Government concerned might have behaved more generously. The case emphasises the principle that the almost complete security of tenure which is rightly enjoyed by Her Majesty's judges in the United Kingdom is not shared, as many think it ought to be, by Her Majesty's superior judges in the Colonies and Dependencies.

I, for one, am very pleased to know that, at any rate, a greater measure of security of tenure is enjoyed by the Puisne Judges of Malta than in some other colonies, but even this, it would appear, is only partial as compared with the position in the United Kingdom. Who, for example, is to be the judge of " proved misbehaviour or incapacity." In England a High Court or other superior judge can only be removed by Her Majesty following an address by both Houses of Parliament and the salaries of the judges are not dependent upon the annual vote of a particular Parliament but are a charge upon the Consolidated Fund.

In the colonies promotion to the rank of judge from the legal staff within the colony certainly depends at the final stage on the recommendation of the Governor who, although representing the Queen and occupying the position of titular head of the Judiciary, is essentially and foremost an administrative functionary having an administrative background and being very much concerned with policy. A Crown counsel or magistrate in a colony in fact depends at all stages of his career upon the favour or disfavour with which he is regarded by the administration. In these circumstances, it is practically an impossibility, at any rate for a magistrate, to exercise complete impartiality except at grave risk to his own prospects of promotion. This is particularly so because the police are themselves a government department and an integral part of the administration. What would be the position, for example, of a humble magistrate or even a High Court judge in a colony where the Governor himself appeared before him as a defendant in a civil action? I believe this situation has actually arisen. Would it be humanly possible for such a magistrate or judge to discharge his functions in that particular case with the same degree of impartiality as he would apply in the case of a less exalted litigant? Would it not be inevitable, even if only sub-consciously, for him to *hope* to be able to find in favour of His Excellency and to shrink from the unenviable duty, if it turned out that way, of finding against him?

My own experience has been that strong-minded persons who occupy judicial positions in colonies and who treat the representatives of the Crown with exactly that degree of impartiality which they accord to the other side only do so at the cost of disfavour in the eyes of their employers, those same representatives of the Crown. Strong-minded magistrates and especially any who dare to criticise police methods, even though these be flagrantly unlawful, are removed to other spheres or dispensed with altogether.

Such a situation is unjustifiable and unhealthy and retards the progress of political development of the colonies on the democratic model and arouses considerable resentment among the colonial peoples who do not fail to observe the distinctions in practice which are denied and rejected by theory.

Yours faithfully,
OLIVER J. SHAW,
Barrister-at-Law.

Dar-es-Salaam, Tanganyika Territory.

[This matter was discussed at the recent Commonwealth and Empire Law Conference and the following resolution was passed: "This conference is of the opinion that the Supreme or High Court Judges of the Colonial Empire should be appointed to hold office during good behaviour and not during Her Majesty's pleasure." See *The Times*, July 22—Eds.]

Production to Defence of Statements of Prosecution's Witnesses

Sir,

The report of the appeal in the case of *R.* v. *Xinaris*, which appeared in the July issue ([1955] Crim.L.R. 437), affords me the opportunity of drawing your attention to a ruling given by Byrne J. at the trial at the Central Criminal Court, which may be of some interest to the profession.

In the course of the trial, leading counsel for the defence, having elicited from a witness for the prosecution that he had made a statement to the police, demanded that it should be produced for his inspection. Senior counsel for the prosecution refused—subject to the learned judge's ruling on the matter. Byrne J. ruled that the defence was entitled to see the statement; whereupon the whole bundle of statements made to the police by the prosecution witnesses was handed over to the defence.

This seems to apply and extend the decision in *R.* v. *Clarke* (1930) 22 Cr.App.R. 58.

Yours faithfully,
A. E. TAYLOR,
Barrister-at-Law.

Temple.

Books and Periodicals

Reviews:

Cases and Statutes on the Administration of the Criminal Law. Revised edition selected and arranged by E. R. Keedy, Emeritus Professor of Law, University of Pennsylvania, and R. E. Knowlton, Associate Professor of Law, Rutgers University. Indianapolis: The Bobbs-Merrill Company, Inc. 1955. xiv and 526 and (index) 10 pp. ($7.50 net.)

This is the usual type of American case-book on the subject of criminal procedure. It does not cover the substantive criminal law, except that it considers the defence of entrapment as part of the law of arrest. The cases and legislation extracted are chiefly American, but English cases are occasionally introduced to show the common-law origin of rules.

On the merits of the book a foreign reviewer need say no more than that it appears to be well designed to bring out the principal problems of procedure for class-room study. To the English reader it is interesting on those subtle differences that have grown up between English criminal procedure and the daughter systems. There are still prehistoric monsters to be met with in the New World—the grand jury, the writ of error, and the motion in arrest of judgment. Americans are much fonder of what they call "nolleing" than we are, and the challenging of jurors has reached pathological dimensions. There are some intriguing inventions: in most states the jury have a discretion in awarding the death penalty, and this apparently works as well as such things ever do. It will be recalled how a similar proposal of the Royal Commission on Capital Punishment threw the Lords and Commons into a fit of alarm and despondency, on grounds that were entirely *a priori*, tautologous, or sentimental. The Americans have a procedure for "polling the jury," which means that after the collective verdict has been announced, the defendant may request that the jurors be separately examined to find whether each agrees with the verdict given in his name. As the cynic might expect, the use of this procedure sometimes reveals that some members of the jury are unhappy about the verdict or even wish to dissociate themselves from it. In England, although the principle of the unanimity of the jury is thought to be of great importance, the judge never explains this requirement to them, and no effective steps are taken to see that timid jurors have not been overborne. Again, Americans do not mind appeals against acquittals, and also permit new trials in criminal cases; both rules have their advocates over here.

Our English arrangements are not wholly satisfactory on the subject of obtaining a reversal of a conviction on the ground of fresh evidence. Some of the cases in this book show a more flexible approach. In *People* v. *Riley,* 191 Misc. 888, 83 N.Y.S. (2d) 281, a writ of error *coram nobis* was successfully brought in 1948 in respect of a conviction in 1936, although the sentence had presumably been fully served, there being new evidence that the conviction was wrong. In *U.S. ex rel.*

Almeida v. *Baldi* (1952) 195 F. (2d) 815 the sentence had not been fully served, and the defendant succeeded in obtaining release on habeas corpus because of a violation of the constitutional requirement of due process of law. See also pp. 482, 490 of the work reviewed. Continental countries likewise have a judicial procedure for setting right miscarriages of justice and clearing one's name, or even the name of a relative after his decease, and this is coupled with a legal right to claim damages from the state for wrongful conviction. In England we have nothing but makeshifts—a reference by the Home Secretary to a Special Commissioner, who need not act according to the forms of law or even allow the parties to cross-examine witnesses, and an *ex gratia* payment for wrongful conviction, where it rests entirely in the discretion of the government whether it will make any payment and, if so, how much.

Happily there is a dearth of English authority on the effect of a gross breach of professional duty by prosecuting counsel. America knows this problem only too well, and convictions have been reversed where the prosecuting attorney suppressed evidence that would have favoured the defendant (pp. 324, 464), where he suggested that defence witnesses had previous convictions when in fact they did not (p. 328), where he argued facts not in evidence (p. 330), and where he called the defendant a " cold-blooded killer " or otherwise expressed a personal opinion on his guilt (pp. 330, 333). The most remarkable instance of control of prosecuting attorneys is *State ex inf. McKittrick* v. *Wymore* (1939) 345 Mo. 169, 132 S.W. (2d) 979. It appeared in evidence that the respondent, a county prosecuting attorney, had so fallen under the domination of evil men in high positions that he had failed to enforce the laws against gambling machines, although it was public property that widespread contraventions occurred. An action in *quo warranto* was brought against him, and the Supreme Court of Missouri by way of warning ousted him from office for a limited period.

In some respects the American jury is less under control than ours. Sometimes it is given power to decide punishment. The right of the judge to comment on the evidence has only been slowly established. So comparatively unimportant is the judge for the trial that in some states he is allowed to absent himself while argument is proceeding before the jury (pp. 335, 365).

America has been slow in arriving at a reasonable solution of the question of comment upon the failure of the defendant to testify. Not only cannot the prosecuting counsel comment upon this failure in most states, but even the judge is forbidden to do so in the federal courts (p. 395), while, on the *tu quoque* principle, the defending counsel is not allowed to explain his client's failure to go into the box (p. 359).

GLANVILLE WILLIAMS.

Homosexuality and the Western Christian Tradition. By Derrick Sherwin Bailey. London: Longmans, Green & Co., Ltd. 1955. xii and 176 and (index) 5 pp. (15s. net.)

Dr. Bailey is an Anglican clergyman; he formed one of a group of doctors and clergymen who produced the excellent and humane Report on the Problem of Homosexuality in 1954. This document was written for the Church of England Moral Welfare Council, for whom Dr. Bailey lectures, by the Church Information Board. It was only privately circulated; but, having regard to the misdirected efforts of some writers on this subject, it is a great pity that the public was not given the opportunity of buying it. This book and the Report have a close resemblance to one another in style and approach. The subject of homosexuality is well known to be a very complicated one, made much more complex by the inevitable revulsion and attraction which it stimulates in the general public. Dr. Bailey is proof against these emotional smoke-screens and deals in the most thoughtful way with the subject: Homosexuality and the Western Tradition, limited to the investigation of the relevant biblical and historical material of the Christian West.

The compass of this book will perhaps prove disappointing to many readers. The disappointment lies in Dr. Bailey's aim: "simply to state as accurately and to examine as fully as possible the Biblical and ecclesiastical attitudes to homosexual practice, and the contributions of Roman law and medieval thought to the views which are now current in the West." He makes the pertinent comment that this general account has not been carried beyond the Middle Ages "because it does not appear that the tradition has undergone any significant alteration since that time—although various legal and other modifications have occurred. . . ."

The first chapter on Sodom and Gomorrah emphasises that the offence of those cities was not primarily homosexuality. It is, indeed, a part of Dr. Bailey's thesis throughout this book that the Church, though by no means exonerated from all blame, was not the malign influence which gave rise to the severe, and sometimes savage, treatment by society of the homosexual. Dr. Bailey, with considerable learning and perhaps too great a reliance on texts (though, indeed, what else is there to rely upon?), makes his points.

The scholasticism of the chapters on The Bible and Homosexual Practice and on Legislation, Teaching and Opinion in the Church are of the same high intellectual calibre. One-time students of Roman law, when reading Chapter III, will be surprised at the literary sources drawn upon and the resulting picture.

The chapter on The Law in England is carefully documented and the person who wishes to have this perplexed subject put into a proper perspective should certainly read it, together with Dr. Bailey's conclusions.

Despite the learning and care which have gone into this book, the reader might well wonder why he is expected to worry about Sodom and Gomorrah, the bible and homosexual practice and some of the more detailed facts concerning the opinion and teaching of the Church. Of course, it is a problem in itself to make people think reasonably and unemotionally on topics such as homosexuality, and the veil of learning, howbeit sincere, is a help to convince the more sensitive. The book, however, would stand on its other chapters alone and particularly for its conclusion. The illogicality, pointed out by Dr. Bailey, in heavily penalising homosexual acts when committed by men, while at the same time virtually disregarding those committed by women, cannot help but make the reader wonder. There is no question here of altering the law or grinding an axe; the object of the book is to make the reader think about the subject as objectively as possible.

T. E. JAMES.

The Verdict of You All. By Rupert Croft-Cooke. London: Secker & Warburg. 1955. 254 pp. (15s. net.)

This book is written with the expressed intention of bringing to the notice of the public the hard lot of the man sentenced for gross indecency on evidence which he believes to be trumped up and malicious. In fact the greater part of the book is a description of life in prison, for a time in Wormwood Scrubs and then for a short intervening period in Brixton prison.

As regards the fairness of the trial and the evidence adduced, too little is said of the actual trial to convince the unbiased reader either way. It is a pity that this aspect is not more fully dealt with so as to underline the main purpose of the book. There have been many reasonable people who have doubted the wisdom or propriety of the number of indecency charges involving homosexual practice during recent years. Apart from the severity of the law in this respect, the sentence of imprisonment in a male population is self-evidently futile as anything other than punishment or deterrence of others.

The description of life in prison has been written too often by offenders against the law. No one doubts the misery of prison life to a sensitive person. It is not enough, however, to try to publicise the facts from an objective point of view, a task well-nigh impossible to someone like the author, who feels that a grave injustice has been done to him. It is a pity that he does not accept the prison institution as a present necessity and make suggestions to ameliorate the fact, taking into consideration the very real difficulties of the staff, or that an alternative to prison is not put forward. The final statement that " others can concern themselves with that " is not enough. There is a case to argue but this is certainly not the way to do it. A book of this nature merely makes it harder for those who really are prepared to concern themselves with these problems.

This book is one of those misdirected efforts to shed light on the legal aspects of homosexuality. The reader will be surprised to learn that the author is fifty years of age.

T. E. JAMES.

Books Received:

The Psychology of the Criminal Act and Punishment. By Gregory Zilboorg, M.D. London: The Hogarth Press and the Institute of Psycho-Analysis. 1955. ix and 145 and (index) 5 pp. (10s. 6d. net.)

The Man On Your Conscience. An Investigation of the Evans Murder Trial. By Michael Eddowes. London: Cassell & Co., Ltd. 1955. 280 pp. (12s. 6d. net.)

The Home-Menders. The Prevention of Unhappiness in Children. By Basil Henriques, C.B.E., M.A., J.P. London: George G. Harrap & Co., Ltd. 1955. 192 pp. (10s. 6d. net.)

Show Business and the Law. By E. R. Hardy Ivamy, LL.B., PH.D., Barrister-at-Law. London: Stevens & Sons, Ltd. 1955. x and 168 and tables of cases and statutes) 11 and (index) 9 pp. (25s. net.)

Diary of a Self-Made Convict. By Alfred Hassler. London: Victor Gollancz, Ltd. 1955. viii and 182 pp. (10s. 6d. net.)

Homosexuality. By D. J. West, M.B., D.P.M. London: Gerald Duckworth & Co., Ltd. 1955. xiii and 128 and (list of references) 9 and (index) 5 pp. (15s. net.)

Background to Murder. By Nigel Morland. London: Werner Laurie. 1955. 222 and (bibliography) 2 pp. (15s. net.)

The Trial of Jomo Kenyatta. By Montagu Slater. London: Secker & Warburg. 1955. 252 and (index of incidents) 3 pp. (18s. net.)

Articles :

Journal of Criminal Law, Vol. 19.
The legal status of a policeman, p. 264.
Criminal capacity in children, p. 270.

British Journal of Delinquency, Vol. 6.
Genetics and the criminal, p. 15.
The sexual offender: a prison medical officer's viewpoint, p. 26.

International Criminal Police Review, June–July, 1955.
Police work in Greenland, p. 158.
The " magic eye " or inspectoscope, p. 166.
Making plaster casts in snow, p. 171.
The preliminary examination of documents, p. 175.

Journal of Criminal Law, Criminology and Police Science, Vol. 46.
Some aspects of mental abnormality in relation to crime, p. 67.
Human relations training for police, p. 105.
Philippine police systems, p. 116.
False fingerprints—a new aspect, p. 122.
Circumstantial aspects of arson, p. 129.
Selection methods for police recruits, p. 135.

Solicitors' Journal, Vol. 99.
Absolute and conditional discharge, p. 461.

Law Journal, Vol. 104.
Souvenir hunters, p. 459.

Law Times, Vol. 220.
" In charge of " a motor-vehicle, p. 63.
Homicide upon provocation, p. 78.
Magisterial topics, p. 80.

Justice of the Peace.
Simple larceny, p. 474.

Police Review, Vol. 63.
The public and the police, p. 472.
Bail? p. 492.
Vicarious criminal liability, p. 544.

THE CRIMINAL LAW REVIEW

Editors

JOHN BURKE and PETER ALLSOP, M.A.

Barristers-at-Law

Editorial

Police regulations and the law

A police driver was involved in an accident when travelling to a disturbance in response to a wireless call. Summonses alleging dangerous driving and failing to obey a traffic sign were dismissed; on a third summons of driving without due care the defendant was given an absolute discharge on payment of three guineas costs.

When dealing with the case at Old Street Magistrates' Court, Lieutenant-Colonel W. E. Batt said: "It may be that you have not broken any police regulations, but you have broken the law of the land. It is a pity that these two cannot be brought into line. There might be an extreme case of police officers chasing a gang of cut-throats or murderers, where it was absolutely essential that they should drive through the lights, and an accident happens. I don't know what the result of that would be." [1]

Juvenile delinquency

The subject of delinquency and approved schools has been much in the news recently. It is understood that at the recent United Nations Congress held in Geneva three days were spent in an unsuccessful attempt to define delinquency; thereafter the delegates proceeded to more fruitful topics.

According to a report in the press [2] Mr. Walter Raeburn, Recorder of West Ham, has put forward a new suggestion. He proposes that children who come into the courts because they are "anti-social" in spite of themselves (*i.e.*, maladjusted) should be kept separate from those who come into the courts because they are "positively anti-social." He would like the distinction between maladjusted and delinquent children to be replaced by a distinction between "wilful" and "unbalanced" children." The Chairman of the Approved Schools Association, Mr. Chamberlain, doubts whether this suggestion would solve the problem, since the difference between the treatment given in approved schools and schools for maladjusted children is so slight as to be undefinable.

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[1] See *The Times* and *Manchester Guardian*, September 2.

[2] *Manchester Guardian*, August 12.

Broadcasting and the Criminal Law

Under the title "The Course of Law," the B.B.C. have recently broadcast in the Light Programme a series which illustrate the working of the criminal courts. The series has traced the progress of an alleged murderer from his apprehension by the police to the hearing of his eventual appeal to the House of Lords. Assured as listeners were by Henry Cecil's authorship of the series of the accuracy of the law and procedure, it was gratifying to hear a programme avoiding the patronising attitude usually adopted for technical subjects.

Prison report

The Report of the Commissioners of Prisons for 1954 (Cmd. 9547) shows a further fall in the prison population from 23,000 to 21,200 at the end of the year, the lowest figure since 1950. This reduction has to some extent lessened the problem of overcrowding, although there were still over 3,200 men in local prisons sleeping three in a cell, compared with 4,575 in December, 1953.

Work started on a new security prison at Everthorpe near Hull, and negotiations for the site of a new prison near Wigan were well advanced.

It is interesting to note that any impression given in the daily press that escapes were more frequent was in fact a false one; the total number of escapes from security in 1954 was less than in the previous year.

The hoped for effects of preventive detention will not be fully seen for some time since the shortage of accommodation makes it difficult to provide a prison for up to 200 men which provides all the facilities required for the second stage of a preventive detention sentence.

Recruiting to the prison service continues to improve; a further gain in numbers was achieved in 1954.

The report was somewhat brightened by photographs of boys at work at the Campsfield House Detention Centre and of Wormwood Scrubs Prison Hospital.

Committal for trial from the coroner's court

Critics of the procedure which permits coroner's juries to commit for trial will be able to quote in support of their arguments two cases where a person was knocked down by a motor-car. In the first, an unnamed case reported at 19 *Journal of Criminal Law* 209, at the inquest the coroner's jury, disregarding the advice of the coroner, returned a majority verdict of manslaughter against the defendant, who was committed to the assizes for trial. Before the assizes the accused appeared before the Middlesbrough stipendiary magistrate upon a charge of manslaughter; the magistrate decided that no prima facie case had been made out and he discharged the accused. At the assizes the accused pleaded not guilty and counsel for the prosecution asked permission to be allowed to offer no evidence. After hearing argument, Devlin J. decided that on the facts of the case, since the defendant had been before a magistrate and the magistrate had decided there was no evidence to go before the jury, the defendant should not be put in peril again. A formal verdict of not guilty was returned by the jury.

In a second case reported in *The Times* of September 8, a coroner's jury returned a verdict of manslaughter against the defendant, who was committed for trial. At the trial the prosecution offered no evidence on the ground that it was quite clear from the coroner's summing-up that he took the view that the child's death had been an accident. Glyn-Jones J. approved of the prosecution's course.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Review. They should be sent to the EDITOR, *Criminal Law Review*, 3 CHANCERY LANE, LONDON, W.C.2. *Every effort will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

The Power to Prosecute

By GLANVILLE WILLIAMS, LL.D., *Barrister-at-Law*

The aim of this and following articles is to survey the English rules and practice on the power to initiate and carry on a prosecution, and to place them to some extent in a historical and comparative setting. The enterprise is fraught with one peril—that of expounding the obvious and expatiating upon the commonplace, for to many readers this part of the law is the business of their life. Some rather elementary propositions must be tolerated if a complete picture is to be presented. And I think it of some importance that the whole picture be shown, for otherwise we are not in a position to pass judgment upon the present law.

The private prosecutor

In most developed legal systems criminal prosecutions are generally brought by officials. In France the *parquet,* or State attorney, normally institutes the prosecution, but private prosecutions are not unknown. A private person is allowed to institute proceedings as a *partie civile,* though the State has powers of control ; there is also a system called *citation directe* in respect of lesser offences (*contraventions* and *délits*), which means that the case does not go through the public prosecutor's office. In Germany a private person cannot initiate proceedings without the sanction of the *Staatsanwalt*, but in some minor matters the injured party is allowed to prosecute on his own account. In Scotland the prosecution of crime is highly centralised, having become practically the sole concern of the Lord Advocate and his staff ; though in 1909 it was ruled that the old procedure of private prosecution was still legally in existence if anyone wished to put himself to the trouble and expense of using it, and use is now made of this procedure in fishery cases. South Africa furnishes another example of a blend between civilian and common law ideas, where restrictions are imposed upon private prosecution. In the United States, only the formal information may be laid by a private person ; thereafter he is superseded by the Attorney-General, District Attorney, or other public prosecutor.

English lawyers may sometimes be heard to claim, absurdly, that we have no public prosecutions ; although this is little more than a form of exhibitionism, it is true to say that no country leaves more to the private prosecutor if he chooses to act. Any one may set the criminal law in motion, even though he is not the immediate victim of the crime. Examples in the reports are: *Midelton* v. *Gale* (1838) 8 Ad. & E. 155 (trespass in pursuit of game); *Morden* v. *Porter* (1860) 7 C.B.(N.S.) 641 (same); *Tarry* v. *Newman* (1846) 15 M. & W. 645 (stealing a growing tree); *Duchesne* v. *Finch* (1912) 23 Cox 170; *Young* v. *Peck* (1913) 77 J.P. 49. The principle was stated by Channell J. in *Kennedy* (1902) 20 Cox 230: "It is put in the form of a criminal offence, and as it is put in the form of a criminal offence, it appears to me that a private individual is entitled to prosecute for it." A private person may move for a writ of attachment for criminal contempt, as in *Bolam* (1949) 93 S.J. 220. It makes no difference to the right of a third party to prosecute that the immediate victim of the crime has received compensation from the offender with which he is satisfied: *Smith* v. *Dear* (1903) 20 Cox 458; *cf. Coney* (1882) 8 Q.B.D. 534 at 553.

Where a prosecution is thus started by a private prosecutor, he is generally left in charge of it to the end, conducting it through his own solicitor and barrister just as if it were a private suit. The Director of Public Prosecutions may, however, take over any private prosecution if he chooses to do so. Another form of control is that the Attorney-General can stop a prosecution by entering a *nolle prosequi*, which it is in his absolute discretion to do at any stage of the proceedings, though this power is infrequently exercised.

The courts regard the victim of a crime as having a priority of right to prosecute. Thus if the victim makes a charge of indictable crime, the magistrates on committing for trial should (if he wishes it) bind him over to prosecute, not a police officer; if they bind over a police officer to prosecute, and both the private prosecutor and the police are represented by counsel at the trial, the court will allow the private prosecutor's counsel to conduct the case (*Bushell* (1888) 52 J.P. 136). It is different if the private prosecutor is not the victim of the crime, as on a charge of manslaughter (*Yates* (1857) 7 Cox 361). See further, Howard, *Criminal Justice in England*, p. 211, n. 87.

The danger in private prosecutions is that they may be used as a means of extorting the payment of money, the criminal courts being treated as a peculiarly efficacious debt-collecting agency. In order to diminish this risk it is necessary to ensure that a prosecution once started cannot be compounded. The rule is that if a private prosecutor drops a case without obtaining the leave of the court, another person may be allowed by the court to continue it (*Wood* (1832) 3 B. & Ad. 657; *Smith* v. *Dear*, above). The magistrate or judge may also take the initiative himself. Thus, in 1863, a person who had brought a summons for assault agreed to drop the case on being paid a sovereign, and neither party appeared on the day fixed; the justices, though they knew what had passed, issued a warrant to arrest the defendant, and the informant then appeared at the hearing, and answered some questions, but did not himself press the case. The justices convicted the defendant, fining him £1, and this was held to be lawful (*Re Bryant* (1863) 27 J.P. 277, 289). Although the power of magistrates to act in this manner is undoubted, it is another matter whether they are wise to do so; for where a fight has taken place and the dispute is afterwards amicably settled, it may be a disservice to both parties for a prosecution to be insisted upon and the old animosities reopened. Finally, it is now the rule that when a prosecution is instituted but subsequently not proceeded with, the clerk of the magistrates' court must send particulars to the Director of Public Prosecutions, so that the latter may decide whether to take up the case.

In some instances it is provided by statute that a prosecution may be brought only by the party aggrieved, or other specified persons. Thus by the Offences against the Person Act, 1861, s. 42, a complaint (*i.e.*, information) for common assault or battery must be by or on behalf of the party aggrieved. This is because, by a wholly exceptional provision, the criminal remedy bars the civil one (*ibid.* s. 45). In interpreting section 42, it has been held insufficient that the person assaulted makes a charge to a policeman; if he himself fails to prefer or authorise a prosecution, the constable cannot do so: *Nicholson* v. *Booth* (1888) 16 Cox 373. Where the person assaulted was so old and so much under the control of the assailant as to be unable to institute or authorise proceedings, his relative was allowed to lay an information on his behalf: *Pickering* v. *Willoughby* [1907] 2 K.B. 296.

It is clear on a fair reading of the Act that the scheme of sections 42–5 applies only where the charge is heard summarily. This is, indeed, expressly stated in the marginal note to section 42; but marginal notes are not used as an aid to interpretation. In *Gaunt* (1895) 18 Cox 210, an indictment for assault at the instance of a stranger was held good, but on the ground that the indictment had been found by the grand jury; the question was left open whether the committal by the justices was good. At the present day there is no grand jury, so that the decision does not help. It is submitted that even without the assistance of authority the Act is sufficiently clear to enable one to say that a stranger would be allowed to prefer an information for assault if it is intended to go for trial. In any event the special rule does not apply to aggravated assaults.

Where an Act provides that a forfeiture shall be paid to a specified person, a distinction seems to be drawn. If the object of the Act is taken to be the benefit of the specified person and not that of the public at large, only the specified person can prosecute: *Hicks* (1855) 4 E. & B. 633. Where, however, the offence is against general public policy, it seems that anyone may prosecute, provided that he professes to be bound by the direction of the Act that the penalty is to go to the person specified: *per* Cockburn C.J. in *Cole* v. *Coulton* (1860) 29 L.J.M.C. 125. Crompton J., however, decided the case on a different ground. If the Act merely provides that the penalty is to be payable to the party complaining, anyone may prosecute; he will be entitled to the penalty even though he has suffered no damage through the breach: *Caswell* v. *Morgan* (1859) 28 L.J.M.C. 208. However, most common informer proceedings have been abolished by the Common Informers Act, 1951, being replaced by ordinary prosecutions before magistrates, in which the defendant may be fined to an amount not exceeding £100.

The power of private prosecution is undoubtedly right and necessary in that it enables the citizen to bring even the police or government officials before the criminal courts, where the government itself is unwilling to make the first move. But it perhaps needs to be considered whether the power is not at present too wide. There is a case for allowing private prosecution for crimes of a truly public nature (such as bribery or perjury), and also for crimes of a private nature (such as larceny or false pretences) where the prosecutor is the person directly affected. But where the crime is of a private nature, being aimed primarily at an individual, and where the prior consent of this individual would have been a defence, should a stranger—should even the police—be allowed to prosecute against the wish of the victim? As the law now stands, a boy of ten could be prosecuted for stealing jam from his mother's pantry, although both his parents protest against the proceedings. Again, P, a stranger, may prosecute D for an alleged libel on the character of X, and D may plead that what he said was true and in the public interest; if this defence succeeds, great harm may be done to X, yet X has no means of becoming a party to the proceedings.

The English rule looks strange to French and German lawyers, in whose systems no prosecution can be brought for certain minor offences save with the consent of the victim. In France, for example, the injured party's consent is required where the prosecution is for such offences as infringement of copyright or trade marks, passing off, and offences against the game laws committed on private land; also in cases of defamation, and abduction if followed by marriage. The principal reason for the selection of these cases is that the injured party may not wish to provide a free advertisement for pirated goods nor to have his name and domestic affairs dragged into the limelight (44 *Law Quarterly Review* 332). I think that when our law of criminal procedure comes to be properly codified, as one day it surely will be, similar safeguards might well be adopted, for there are possibilities of abuse and vexation in the present law. On the other hand, it must be said that these possibilities have no great actuality. Prosecutions are, after all, too troublesome and expensive for private persons to conduct unless their interests or feelings are deeply aroused; and a vexatious prosecution would be likely to result in an acquittal and to be followed by an action for malicious prosecution. Moreover, if it is found that a third party is attempting to take criminal proceedings without the consent of the victim, the magistrate may well decide to refuse to issue process.[1]

Police prosecutions

In practice, even in England, the great majority of prosecutions are undertaken by officials, particularly the police. The English police combine the functions of preventing crime, investigating crimes that have been committed, and prosecuting. They are organised on a local basis and still remain largely free from central control. The government cannot direct the police to prosecute anyone (though it may, of course, prosecute on its own account). The police are also independent of the judiciary—or rather the judiciary is independent of the police.

These characteristics of the English police system are thrown into relief when compared with the system of a Continental democratic country like France. The French police consists of two separate organisations, the administrative police and the judicial police; and both operate under centralised direction. It is the duty of the administrative police to prevent crime, while the judicial police (*police judiciaire*) are concerned with the investigation and prosecution of offences. The judicial police include in their organisation not only the police proper but also what an English lawyer would call prosecuting counsel and examining magistrates.

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[1] For literature on the problem see Criminal Law Commissioners, 6th Report (1841), *Parliamentary Papers*, x, 77; Stephen, *History of the Criminal Law*, i, 495–6.

The way in which this position arose is of some interest. It is not generally realised that until the nineteenth century England had a country-wide system of public prosecutors, who during the period of the Council or Star Chamber acted under quite close central direction. These public prosecutors were none other than the justices of the peace, who acted as we now expect the upper ranks of the police force to act, undertaking detective work, getting up the case against the accused, and bringing him to justice by committing him for trial. In fact they acted astonishingly like the French *juge d'instruction* of the present day. But the system was woefully inadequate to repress crime, and official activity came to be supplemented by innumerable local prosecution societies, many with their own private police. The appalling lawlessness of England before Peel has lately been described by Sir Carleton Allen in his book *The Queen's Peace*; and it is sufficient here to record without elaboration the immense change for the better that began with the introduction of the Metropolitan Police in 1829 and the extension of county constabularies in 1856.

By this time the functions of the justice of the peace had been modified. A change of attitude found expression in the Indictable Offences Act, 1848, which established the purely judicial procedure of the preliminary inquiry and committal for trial. From this date, or at any rate from 1856, magistrates abandoned completely the role of detectives and prosecutors, and these functions had to devolve elsewhere. What happened was that they were taken up by the police, who assumed the duty of prosecuting because there was practically no one else to do it. Thus it was not through any planned stroke of legislative policy that the English police became public prosecutors.

The Director of Public Prosecutions

This system of private prosecution supplemented by police prosecution was far from giving general satisfaction in the nineteenth century. Bentham had advocated the appointment of public prosecutors as early as 1802, and this was strongly supported by the Criminal Law Commission in 1845, and by the sponsors of numerous Bills in Parliament from 1854 onwards, which had as their object the creation of a central public prosecutor's office with district agents. These proposals received wide support, but they failed to move the Government, which countered them chiefly with the argument of expense; and they met the inevitable opposition of the legal profession.

The problem was eventually solved by the characteristic English solution of a half-measure, known as reasonable compromise, followed by a slow process of muddling through. A Director of Public Prosecutions was instituted in 1879 and was given an office staffed with two clerks. No provision was made for local officials. The Director was not intended to supersede the Treasury Solicitor, who had undertaken important government prosecutions; the former was allowed merely to decide upon the prosecution, the Treasury Solicitor being left to make the arrangements. This measure, though parsimonious to a degree, was in fact a waste of money, because it merely created a duplication of effort. This came to be perceived during the course of the next five years, and so in 1884 the office of Director of Public Prosecutions was merged with that of Treasury Solicitor, a retrograde step that virtually put the position back to what it was in 1879. This arrangement was itself undone in 1908, when the offices were again separated; and the important departure was made of taking prosecuting functions from the Treasury Solicitor and concentrating them in the hands of the Director of Public Prosecutions.

So matters remain at the present day. With the passage of years the Director has come to play an increasingly important part in the prosecuting system, particularly in the advice that he is able to give the police in difficult cases. It should be noted that the Director may advise on the policy of undertaking the prosecution as well as on the chance of success. The Director may himself prosecute in any serious, important or difficult cases, or by direction of the Attorney-General, but does not otherwise take the initiative. One charge that always attracts his attention is murder. A private prosecution for murder would now strike us, even in England, as a grotesque perversion of legal procedure; we could not tolerate that one private person should seek the life of another through the criminal process, though this was formerly of everyday occurrence. At present, the Director of Public Prosecutions is required to take over every murder charge; and if he does not like it he can refuse to offer evidence in the usual way. Apart from murder, the general principle on which the Director acts is to prosecute in cases of general public interest—not in cases that are of merely local or individual interest or are of minor importance. Examples of cases in which he will prosecute are sedition, conspiracy to defeat justice, bribery, obscenity, coinage offences, fraudulent bankrupts, incest, and bad cases of blackmail. The Director, as Crown solicitor for criminal cases, has no investigating staff, and relies for this purpose on the co-operation of the police. The law on the subject will be found in the Prosecution of Offences Acts, 1879 to 1908, and the Regulations of 1946, S.R. & O. No. 1467.

Those who deny that England has a system of public prosecutions do so on the verbal ground that a policeman or official who prosecutes acts in law as a private person and not in pursuance of any official power. In fact, however, a prosecution by a policeman or other official is brought in pursuance of superior orders or under statutory authority and at public expense, so that it is unreal to describe it as a private prosecution.

The employment of solicitors

The practice of police prosecution has been improved, not only through careful training of the police but through the increasing employment of town clerks and prosecuting solicitors to prepare the cases and conduct them in court (or to brief counsel to do so). There may be a salaried prosecuting solicitor on the staff of the local authority, especially in boroughs, or the solicitor may be in private practice and remunerated either by fees or by a salary, and customarily called by some such title as "county solicitor" or "police solicitor," or the work may be distributed between several firms. The Metropolitan Police has had since 1935 its own Solicitors Department, members of which are qualified solicitors and appear for the police in magistrates' courts. Over the country as a whole there is still great variation in detail in the management of prosecutions. An American observer, Pendleton Howard, in his classical study of English criminal practice, commented: "The whole subject of the management of prosecutions seems to be enveloped in a mist of obscurity which it is difficult to penetrate. People who are actually engaged in the business in one locality cannot tell you how, or by whom, their own duties are discharged in another. Nor, for that matter, does anyone seem very much to care" (*Criminal Justice in England,* p. 189). These multifarious solicitors fulfil to a large extent the role of local public prosecutors in other countries; they will advise not only on whether there seems to be a good case, but even on the propriety of the prosecution.

Governmental prosecutions

Some Government Departments which administer statutes or issue numerous statutory instruments have inspectors or Enforcement Divisions, who will bring proceedings for offences within their purview and there is a tendency to regard such administrative offences as outside the responsibility of the police. Examples are the functions of the Board of Trade with regard to manufactures, companies, bankruptcy, and weights and measures;

the Ministry of Labour and National Service administers minimum wages, hours of work, factory and national service legislation; the Post Office prosecutes under the Post Office Act; the revenue Departments concern themselves with the evasion of taxes and duties; and such Ministries as those of National Insurance, Transport and Civil Aviation, and Fuel and Power are also active within their respective provinces. The Director of Public Prosecutions prosecutes for those Departments that have not their own prosecuting staff. Such officers and Departments can prosecute not because they have any special privilege in the matter, but simply because of the general principle that anyone can prosecute for a crime. There are, indeed, some express statutory provisions of an enabling character, such as the Catering Wages Act, 1943, s. 13 (3), and the Births and Deaths Registration Act, 1953, s. 38. These are not needed to enable the official to prosecute, but they make it clear that prosecution is part of his duty.

(To be continued)

Prediction Studies

By JEAN GRAHAM HALL, LL.M., *Barrister-at-Law*

On hearing the pronouncement of sentence of imprisonment in court, one frequently wonders whether, at the end of such period, the prisoner will emerge a useful citizen, or whether the protection to the public will last merely for the period of incarceration. Methods of research, still in their infancy, point to an era when the court could be informed of the estimated chance of a person not being reconvicted according to whether he was put on probation, sent to prison for a long or short period, or, if appropriate, committed to Borstal training. The court would then truly be able to weigh the need to protect the public and deter others, with the need to reform the criminal.

The pointers in this direction are termed "Prediction Studies," although criminologists who proffer their researches prefer the title "Experience Tables." Strictly construed, these tables do not predict but only show what factors help to indicate likely success or failure.

Researches in America

The best known of all these researches are those undertaken in America by Professor and Mrs. Glueck of Harvard University. Twenty-five years ago they conducted their first researches into a five-year post-parole period of prisoners released from Massachusetts Reformatory in 1921 and 1922. They scrutinised every aspect of the various stages in the life of 510 men. Of the 422 men whose post-parole conduct could be ascertained, 21·1 per cent. were successes, 16·8 per cent. partial failures and 61·1 per cent. total failures. The Gluecks correlated the recurring factors common to those in each group and then constructed prognostic tables, indicating the five most important factors contributing to success or failure, namely: previous work habits, the seriousness and frequency of crime, previous arrests for crime, the amount of economic responsibility accepted before sentence, and the degree of mental abnormality ascertained on entry to the reformatory. This study [1] was followed by two others on the future life of the same men, covering a fifteen-year period in all. The Gluecks then carried out other similar researches into the lives of discharged prisoners, delinquent women and juvenile offenders.

Borstal training study

The only comparable reasearch in this country [2] recently completed and published concerns prediction methods in training lads sentenced by the court to Borstal training. Dr. Mannheim and Mr. Wilkins started with three basic assumptions: (a) some lads return to crime after Borstal training, some do not; (b) the majority who return to crime do so within a short period of release; (c) over a period of time much data is recorded regarding the past career and present progress of each of these lads. The aim of the research was to decide how best the information available might be used to indicate the likelihood of success or failure of the training.

The authors selected a sample of one in every three entrants to Borstal in 1946–47, the total sample consisting of just over 700 cases. They defined "success" as the absence of further conviction (other than a simple fine) up to August 31, 1951. This meant that the lads had on average a testing period of 3½ years from their release from the institution.

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[1] Sheldon and Eleanor T. Glueck. *500 Criminal Careers.* Published by Knopf, New York.

[2] *Prediction Methods in Relation to Borstal Training.* Dr. Hermann Mannheim and Leslie Wilkins. Published by H.M.S.O.

The authors were able to give weights to each item of information. The significant factors which lead to success after a Borstal sentence were carefully noted. If he had been living at home before his court appearance, with good home conditions and working at a steady job, the Borstal trainee's likelihood of making a success afterwards was considerably enhanced, particularly if he went home on discharge. Further, if during his time at Borstal he obtained good reports from his housemaster and the governor, and made no attempt to abscond, his chances of success rose considerably. Together with these factors, the fewer previous convictions and therefore fewer previous treatments, and a somewhat later age of apprehension for crime, all helped.

Dr. Mannheim and Mr. Wilkins seek to throw light upon an individual by comparing him with other individuals subjected to similar background and experience. They have compiled mathematical tables, with the data treated as a set of equations. The tables, they claim, possess the four basic requirements of simplicity, efficiency, reliability and validity. Of the 700 cases in the original sample, they used only 385 to build the prediction equations, because this was the total number of cases offering full information.

Prison Commissioners' Reports

An interesting sidelight coming from this research concerns the reports which the Prison Commissioners give to the courts under the Criminal Justice Act, 1948, s. 20 (7). About one-quarter of the lads in the present sample sent to Borstal by the court were not, in fact, recommended for their treatment by the Commissioners. The success rate among those recommended for Borstal training was 49 per cent., while that amongst those sent to Borstal against the recommendations of the Commissioners was 46 per cent.—a small statistical difference between the two.

Future use of prediction tables

Should a court, when sentencing a prisoner, rely on what the judge or presiding magistrates think " seems best "? The answer could be a bold " Yes " where the intuitive approach is based on years of sound experience and personal knowledge, but not otherwise. Where experience can be offered concerning the training of numbers of other similar cases, nothing can be gained by ignoring such experience.

The most important claim of Dr. Mannheim and Mr. Wilkins is that their researches provide clues as to what constitutes effective treatment in various types of cases. They suggest that it should be possible to construct further predictions regarding a specific type of sentence to which a particular criminal is most likely to respond. They would strongly dispute that statistical tables could oust individual judgment. But because such tables can condense so much information gained over a wide field, they modestly proffer them as a useful adjunct.

An Australian Letter

Melbourne,
August, 1955.

Contempt of Parliament

Your correspondent, at real personal inconvenience, became one of the sardines in the High Court of Australia witnessing recent proceedings on a major constitutional issue of importance to the criminal law. The matter was well known to all Australians: the dramatic proceedings in the House of Representatives at Canberra, when Fitzpatrick and Browne were sentenced to three months' imprisonment by that body, were, such are our folkways, broadcast throughout the nation.

The background to the affair is concealed by the smog of murky local government in Bankstown, a municipality of Sydney, lit only by suggestions that much of the corruption in that municipality dated from the extensive misappropriation of defence funds in wartime by people of considerable position in New South Wales. Mr. Morgan, a Labour member of the Federal House of Representatives, has for over eleven years, been publicly alleging municipal malpractice and gangsterism in Bankstown, referring frequently to a " Mr. Big " and his supporter " Mr. Wig." His frequent demands for a Royal Commission were unsuccessful. Through a local newspaper, *The Torch,* the campaign against " Mr. Big " was pursued, being only transitorily interrupted by the sudden conflagration which destroyed the premises of *The Torch*. Browne, a freelance journalist, then began a series of attacks on Mr. Morgan in a rival local paper, the " Bankstown Observer," alleging *inter alia* that Mr. Morgan was involved in an immigration racket and that he used his parliamentary position to further these activities. Mr. Morgan, in a speech in the Federal Parliament, named Fitzpatrick, a Bankstown businessman, as " Mr. Big " and succeeded in bringing Browne's articles to the attention of a Parliamentary Privileges sub-committee of the House of Representatives.

Before this committee, Fitzpatrick agreed that he paid Browne £30 per week to write articles attacking Mr. Morgan, with the express purpose of silencing Mr. Morgan in his Bankstown campaign. The committee reported to the House of Representatives that in its opinion this constituted a grave breach of the privileges of Parliament. The full text of the sub-committee's report was not tabled—only excerpts from it were read to the House by the Prime Minister.

Brought before the Bar of the House, Fitzpatrick, big but inarticulate, haltingly apologised, while Browne delivered a long, aggressive, and confused attack on the processes by which he was to be convicted without a " trial." The subsequent debate was on a high level, dignified and sincere, cutting across party lines, and culminating in the three months' sentences on Fitzpatrick and Browne.

Canberra's inheritance from Westminster was here quite explicit. Section 49 of the Australian Constitution provides that " the powers, privileges, and immunities . . . of the House of Representatives . . . shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth."

As Fitzpatrick and Browne were then imprisoned in Canberra, the habeas corpus application came before Mr. Justice Simpson of the Supreme Court of the Australian Capital Territory. Under section 13 of the Seat of Government Supreme Court Act, 1933–35, the matter was transferred for hearing before the Full Court of the High Court of Australia and was heard in Melbourne from the twenty-second to the twenty-fourth of June.

The authority for the imprisonment produced to the court was a curt order, signed by the Speaker of the House of Representatives, referring to the resolution of the House ordering the imprisonment; it was, in fact, in similar form to that adduced in *The Sheriff of Middlesex Case* (1840) 11 A. & E. 273, and carefully omitted any narration of the facts justifying the resolution. The attack on the authority of the House to act in this way was based principally on the terms of sections 49 and 71 of the Australian Constitution. Spared, as are English lawyers, the need for any acquaintance with the fearful complexities of a written Constitution, the details of the argument need not be recounted—it suffices to say that the order *nisi* was discharged, that the Privy Council expeditiously refused special leave to appeal,[1] and that Browne and Fitzpatrick are serving their terms.

The main interest in the case lies in the light it throws on this community's approach to the imprisonment of an individual by Parliament's direct action. There is widespread disapproval of the resurrection of antique powers, never previously used by the Federal Parliament and rarely exercised by state legislatures. The judiciary's position in public regard is such that real unease is felt when individuals—even such clearly guilty individuals as Fitzpatrick and Browne—are imprisoned otherwise than by order of a court. Neither before the Parliamentary Privileges committee nor before the House were Fitzpatrick and Browne allowed legal representation.

It is not unlikely that when the House of Representatives meets again legislation will be introduced to provide that when either House of Parliament resolves that anyone has acted in breach of their privileges the Attorney-General shall thereupon institute proceedings in the High Court alleging the contempt; and that the court will be given defined powers of punishment and a definition of contempt to apply. Such legislation was recommended by a Parliamentary Select Committee under the chairmanship of Sir John Quick in 1908 and later by Mr. Latham, then Attorney-General (later Sir John Latham, Chief Justice in the High Court), and has been adopted in Queensland.

It is submitted that, in the words of the history primers, this would be "a good thing." It might also be a good thing for the Mother of Parliaments to consider thus delegating to the courts her punitive powers for contempt. Only the courts are, in the eyes of the public, free from suspicion of the baser party-political motives. Whatever their constitutional heritage, Parliament's punitive powers are now an anachronism.

Embracery

There is a somewhat lascivious sound to the offence of embracery; this was belied by the prosaic terms in which one Coman was charged on April 14 of this year before Mr. Justice Monahan of the Victorian Supreme Court with contriving and intending to obstruct and impede the true course of justice by attempting and endeavouring to persuade a juryman from coming to a true verdict according to the evidence. He was convicted, his being the first conviction in the state of Victoria for the offence of embracery.

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[1] See [1955] Crim.L.R. 570.

The subject of the charge were the words spoken by Coman to Mayne, a juryman then hearing an allegation of shopbreaking, larceny and receiving against an accused man named Elliott. At the luncheon adjournment, Coman followed Mayne to a city hotel and asked him whether he was on the jury panel:

Mayne: "Could be; you never know."

Coman: "What do you think of the chances of the accused, Elliott?"

Mayne: "That is entirely a matter for the jury to decide."

Coman: "Elliott is innocent; I am his brother and I did the bust. . . . How would you like to sit in for an extra six hours? You would not like to see an innocent man go to gaol. It is worth £50 to you; you can have the money now and an extra £50 after the case."

Mayne: "Whatever happens, justice will be done."

Even if the verbiage of the above is strange and mathematically imprecise, its intendment is clear.

Mayne thought about the matter, told the foreman of the jury what had happened and suggested that the judge should be notified. He then waited for the foreman to speak; but when he delayed in doing so, and despite the fact that the trial judge was then charging the jury, Mayne summoned his courage, interrupted the judge, and told him of the scene in the hotel. The jury was discharged. The police promptly pursued Coman, whom they knew well, his twenty-three prior convictions in Victoria having given them ample opportunity to acquire this knowledge.

At Coman's trial, Mayne proved to be an excellent witness and Coman was convicted. The case merits attention if only because of the rarity of conviction for this crime. It is peculiarly hard to detect and to prove. It is the sort of thing which, as Mr. Justice Monahan said, "stabs at the administration of justice in its most vital parts," for trial by jury is the very heart of our system of administering the criminal law.

Mr. Justice Monahan defined embracery as "any corrupt or improper attempt to influence a juryman as to the result of a trial, other than by the leading of evidence and the addressing of argument in open court." The offence is thus easily defined; the difficulty lies in its detection and proof. There is a dearth of authority bearing on the problem. Hawkins, *Pleas of the Crown* (Vol. 1, p. 259) offers a definition which is adequate and remains unchallenged over the century and a half since its enunciation: "any attempt whatever to corrupt or influence, or instruct a jury, or any way to incline them to be more favourable to the one side than to the other, by money, promises, letters, threats, or persuasions, except only by the strength of the evidence and the arguments of the counsel in open court, at the trial of the case, is a proper act of embracery." Other textwriters have followed this definition without adding to its precision, and there are only isolated instances of its application in the courts—the latest precedent for an indictment for this offence being, apparently, in 1909 in *Davies*, 150 C.C.C. Sess. Pap. 736. The occurrence of this offence cannot conceivably be as isolated as this; the truth probably is that there are few jurors with Mayne's courage and sense of public duty whose patent honesty does not immediately deter even such rogues as Coman.

Had Elliott been charged before a judge of the Supreme Court, and had the courageous juryman, Mayne, followed the course he did before a judge of the Supreme Court, the appropriate procedure would have been for the judge to summon Coman before him immediately and to deal with him as being in contempt of court. Elliott's offence being tried before a Court of General Sessions, the Victorian equivalent of the English Court of Quarter Sessions, the more formal procedure of a separate charge was followed. This was the safer way to deal with the problem, allowing the prosecution adequately to prepare its case; it would, however, have been appropriate procedure, if *Davies* [1906] 1 K.B. 32 is correct, for the Supreme Court itself to treat such acts as contempt, even though the juror concerned is in attendance on General Sessions. The common law misdemeanour of embracery is thus both conceptually and historically an offshoot of the court's jurisdiction in contempt.

Coman's trial ran for two and a half days. The evidence concerning the offence was extremely carefully presented; but only in one sentence was there any mention of a motive for Coman's attempt to impede the due course of justice. This was when Coman told the police that "Elliott is a mate of mine." Doubtless there was more to it than this; but possibly Coman's offence was an example of what is as rare as are convictions for embracery—loyalty amongst thieves.

Accessory after the Fact

It is reported that horse trading, as an avocation, rarely tended to produce the most punctilious honesty; nor has dealing in motor-cars, the modern equivalent, manifested that effect. Indeed, in the aetiology of crime, the car must hold a significant place—its hypnotic attraction to unstable adolescents, its obvious advantages to the professional criminal, and its use in assisting the commission of and escape from crimes, entitle the automobile to a more prominent place in the literature of crime causation than it has received. Recently, cars have been prominent in England and Australia in the definition of accessories to crimes.

In *Bullock* [1955] Crim.L.R. 179 the Court of Criminal Appeal distinguished *Lomas* (1913) 9 Cr.App.R. 220 and held that where the accused hired a car and lent it to others who he knew would use it for an unlawful purpose, though it was not shown that he knew exactly what the particular crime was, he was properly convicted of being an accessory before the fact to their crime.

Recently, in *Tevendale* [1955] Victorian L.R. 95, the Full Court of the Victorian Supreme Court (Herring C.J., Sholl and Martin JJ.) gave a detailed analysis of the offence of being an accessory after the fact to a felony. Tevendale was convicted of being an accessory after the fact to the larceny of a car by one, Dick. Tevendale had repainted and altered the engine number of a car stolen by Dick. In a signed statement to the police, Tevendale admitted that, some few days before the car in question was brought to him, he agreed with Dick and another man that he would alter the engine number and " fix up " any cars which they " knocked off." Dick had later told him that the car, the subject of the charge, was " hot."

Tevendale sought leave to appeal against his conviction. It was argued on his behalf that personal assistance to the felon, such as concealing him or furnishing him with means of escape, is required for a conviction of being an accessory after the fact to a felony. The court was unanimous in rejecting this contention, holding that personal assistance in this sense is unnecessary and that " it is sufficient to prove that something was done for the purpose of assisting the principal felon to escape apprehension or punishment." Reliance was placed on the decision of the Court of Criminal Appeal in *Levy* [1912] 1 K.B. 158, on the earlier New South Wales case of *Reeves* (1892) 13 N.S.W.L.R. 220, and on a strangely apposite example given by Maule J. in *Butterfield* (1843) 1 Cox C.C. 39 concerning the alteration of the colour or appearance of a stolen horse. On this aspect of the *actus reus* of the offence, Tevendale was then properly convicted.

There was, however, disagreement as to the mental element necessary for a conviction. Must the accused know of the specific offence that has been committed by the principal felon before he can be an accessory or is it sufficient if he knows merely that a felony, its details undefined or unknown, has been committed? Whether the answer to this question is in the affirmative or negative the court held that Tevendale's appeal must be dismissed in that there was overwhelming evidence that he knew Dick had stolen the car which he defaced; but the question is of some theoretical interest, is similar to that raised in *Bullock*, and was faced by the three judges hearing the appeal.

Herring C.J. and Sholl J. were of the view that, before a man can be convicted of being an accessory after the fact, the jury must be satisfied that he knew that the principal offence had been committed by the principal felon, " that if charged with assisting a thief it is necessary that he should know that the theft has been committed," and that " it is not sufficient . . . to prove knowledge in or notice to the accused that the person harboured or assisted was guilty of some felony of the precise nature of which he did not have knowledge or notice."

Martin J. disagreed with this view of the law, holding that " all that it may be necessary for the Crown to prove is the existence of a felony, without specifying the actual felony."

The analysis by Sholl J. of the authorities is compelling and the narrower view of the offence advanced by the majority hard to avoid; but the requirement of this specific knowledge by one accused as an accessory after the fact leads to both theoretical and practical difficulties. Following *Bullock* it is not necessary that the accessory *before* the fact to a felony should be shown to have this precise knowledge, yet on the view of Herring C.J. and Sholl J. in *Tevendale* such knowledge is necessary for a conviction of one accused of being an accessory *after* the fact. The reconciliation of this apparent conflict might perhaps be sought in the greater gravity of the preliminary offence. However, on this view, if the accused believes the felon he is assisting has committed larceny when in fact his offence is murder (a mistake possibly attributable to misinformation supplied by the felon), or if he believes he is assisting a murderer when he is only assisting a thief, the incongruous result is that he must be acquitted.

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This is the last Australian Letter that I shall be writing for over a year. For most of this period I shall be teaching criminal law at the Harvard Law School; not Australian criminal law but American criminal law, which has loosened the apron strings of the common law of crime more than has the Australian infant with which I am familiar. Whether, thereafter, an Australian Letter with an American accent will interest you remains to be seen—certainly, one could not but gain from closer acquaintance with the brilliant and profound work which is currently being done for the American Law Institute in the preparation of a Model Penal Code.

NORVAL MORRIS.

Mr. Sutterthwick's Court

By A. E. Jones
Magistrates' Clerk

Mr. Sutterthwick's First Morning

Sergeant Quing, the warrant officer, opened the door which admitted the public, and Mr. Sutterthwick felt that his first day as a stipendiary magistrate was really beginning. He had just granted 23 summonses to the police, 2 to the borough council, 1 to a man who complained of assault, 2 to women who complained of their husbands, and 34 to the mild little man who complained that people didn't pay their income tax, but all that had seemed more like being in a ticket office than on the bench. Now the anxieties of judicial responsibility were on Mr. Sutterthwick, and he realised how exposed and lonely was the occupant of the big chair that dominated the court room and drew all eyes. In his earlier days at the bar he had often been in courts like this, but everything looked strange from where he now sat and the whole atmosphere affected him differently. Mr. Sutterthwick wished he felt possessed of the certainty, the omniscience and the infallibility which he was sure were expected of him.

" Simple drunks "

Before the last few from the queue had settled themselves at the back of the court, Mure, the assistant gaoler, had ushered into the dock the first prisoner. He was a " simple drunk," Albert Hideman, looking quite neat and respectable this morning after having been found lying in the gutter last night. He pleaded guilty very shamefacedly. Mr. Sutterthwick knew what he had to say in a case of this sort. " Any trouble? " and " Anything known? " he asked the arresting constable and the assistant gaoler respectively. From each the answer was " No, your worship."

" Anything you want to say to me? " said Mr. Sutterthwick to the defendant.

" No, sir . . . I don't think so. . . . Except that I'm sorry . . . and I thank the officer for taking care of me."

" You must pay a fine of 7s. 6d."

Everybody seemed satisfied; Mr. Sutterthwick's first case had passed off very well; he trusted it was a good omen. Mr. Hideman, being a newcomer to the court, did not know that he was a sort of landmark in the magistrate's career.

The charges against Donald Pearsell, the second defendant in the magistrate's register, were entered as " ditto," " ditto." He still looked rather the worse for his experience and dully admitted having been found drunk in the street both on Saturday and on Sunday night. Mr. Sutterthwick elicited that the defendant had been no trouble to the police and was not known at the court. " What have you to say about this? " he asked Pearsell. " Rather disgraceful, isn't it, drunk two nights running? "

" It was my birthday," mumbled the defendant defensively.

" It can't have been your birthday both times." There was no reply to this and Mr. Sutterthwick felt he was being as quick in the uptake as a magistrate should be. He glanced at the piece of paper on which Frell, the clerk, had jotted down for him the maximum penalties for some of the more common offences. Under the heading " Drunk " the note read " 10/- 1st. 20/- 2nd in 12 mos. 40/- 3rd in 12 mos."

" You'll be fined 7s. 6d. for the first offence and 12s. 6d. for the second," the magistrate announced.

Frell rose in his seat almost as if he had been stung. " 10s. is the maximum on each, sir," he whispered. " There's no previous conviction." Seeing from Mr. Sutterthwick's expression that he found it difficult to accept this, the clerk explained: " These two convictions are both on the same day," and added " There's a decided case on the point. I can show you the reference in *Stone* if you like, sir." [1] Mr. Sutterthwick took one look at the two fat blue volumes and said hastily, " No, thank you, Mr. Frell. I accept what you say, of course. What had I better do now? If I fine him 10s. on each that'll come to the same thing, won't it? "

" No, sir, I don't think it would be in order to increase the first fine now. That wasn't a nullity. The second one was, so you could reduce that to 10s."

Mure, realising that something was amiss, had not taken the prisoner away. " Pearsell," said the magistrate, " the clerk has just pointed out that there's been no previous conviction in your case. In view of that I shall make the second fine 10s. instead of 12s. 6d."

" Thank you, sir," said the defendant, showing his first sign of animation that morning.

Accosting

Frell felt that the new magistrate had handled the situation very neatly, but the experience had shaken Mr. Sutterthwick. However, he had no time to imagine what further pitfalls might lie in his path; the next case was in front of him. Mr. Sutterthwick showed nothing of what he was feeling; Kitty McManus, who now faced him, showed clearly that she felt far less at ease in her position than the magistrate did in his. With a nod and an almost inaudible "Yes" she admitted that she had been guilty of insulting behaviour in the street likely to cause a breach of the peace, contrary to the council's by-law.

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[1] See *R.* v. *South Shields Licensing JJ.* [1911] 2 K.B. 1; Stone, 87th ed., 231.

"Accosting men, your worship. Two of them pushed her aside and appeared annoyed," said the arresting officer in reply to a question from the magistrate.

"Not known here, sir," was Mure's cautious reply to his next question.

"Is this insulting behaviour likely to cause a breach of the peace?" murmured Mr. Sutterthwick to Frell.

"Your predecessor used to hold that it was, sir," said the clerk diplomatically; and added: "At this stage there's often a chance of getting them out of this way of life."

Mr. Sutterthwick considered a moment and then asked the defendant: "What have you to say about this?"

"Nothing, sir."

Her answers were just as brief and negative when he inquired whether she was married, whether she was working, whether she lived with her parents, and whether they knew of this. She made no reply at all when he asked: "What on earth makes you do this sort of thing?"

In the slightly baffled pause which followed, Miss Garrafrey stood up in the probation officers' box and said: "I would like an opportunity, sir, to see if there's anything I can do to help this girl."

"Certainly something ought to be done to stop her going on like this. What do you suggest, Miss Garrafrey?"

"If you would put her back, sir, I could make some inquiries and report to you later. That may save a remand, . . . which might have to be in custody."

Mr. Sutterthwick considered again and then said to the defendant: "You hear what the probation officer says. I don't want to have to keep you in prison while we find out something about you. So tell Miss Garrafrey all she wants to know. I'll see you again at 2 o'clock. We've got to find some way of preventing you from ruining your life completely."

Kitty McManus departed silently with the assistant gaoler, and was succeeded by Mary Hall who pleaded guilty to being a common prostitute and causing annoyance to people by soliciting in the street.

"9.50 p.m. last night; in the High Street; three gentlemen appeared annoyed; known four years, your worship" volunteered the constable who had arrested her.

"Last conviction three weeks ago; fined 40s." volunteered Mure.

"The maximum's 40s." volunteered Frell, sotto voce.

Mr. Sutterthwick could see they were trying helpfully to get him into the routine, but he did not want to get into a routine.

"Have you anything to say to me?" he said to the woman.

"I'm afraid there's not much use, sir," she replied rather sadly. She spoke quietly and respectfully; the general impression she gave was that of a respectable domestic servant.

"What makes you adopt this way of living?" asked Mr. Sutterthwick in a rather exasperated voice.

"I've two children and they've no father, sir," was the mournful reply.

"Why don't you do some proper work and keep them that way?"

"I've not been well enough to, sir. . . . But the doctor says he's going to sign me off, this week."

It seemed to Mr. Sutterthwick that this was no hardened street woman and that, if treated with humanity, she could yet be brought back to decency. An unexpected gesture of generosity and faith at this very moment might make all the difference to her future, he felt. "If I let you go now, will you promise me to register at the Labour Exchange straightaway?" he said.

"Yes, sir. I will. . . . I don't really like what I have to do."

"You don't have to do it. I'm going to trust you not to in future. I shall discharge you absolutely this time."

With a "Thank you, sir" Mary Hall left the court by an unaccustomed door, smiling quietly to herself.

Frell could not resist leaning over towards the magistrate and whispering: "The two children she speaks of are in a home, sir. The Council wanted her to contribute towards their maintenance, but as she never takes on any full-time job your predecessor felt the evidence of means wasn't sufficient to justify him making an order." Before Mr. Sutterthwick had thought what to say about this, Mure was announcing the next case.

Barrow boys

It was a charge of wilfully obstructing the highway with a costermonger's barrow; after hearing the facts and the previous convictions Mr. Sutterthwick came to the conclusion he could not avoid becoming just a piece of judicial machinery in this type of case. The fines imposed were so obviously treated merely as a sort of tax that the street trader paid on his business.

On his last previous appearance the defendant had been fined 15s. Mr. Sutterthwick decided he could not do better than adopt the standard of his predecessor. The announcement of the sum brought an immediate " Can I have time to pay, sir? " Mr. Sutterthwick knew that " seven days to pay " was one of the stock phrases of the magistrates' courts. It seemed appropriate to employ it now. The barrow boy left looking very cheerful.

The clerk got up again and said: " These street traders used to give us a lot of trouble collecting the money when they were given time to pay, sir. Your predecessor stopped it by telling them he'd consider their application at the end of the morning if they hadn't been able to send for the money in the meantime. Almost invariably they had it on them, and paid up."

Somewhat reluctantly, Mr. Sutterthwick tried this technique in the next case, which was a repetition of the last up to the request for time to pay. This defendant departed looking much less cheerful than the previous one. Mure's voice telling Sergeant Chumbleton, the gaoler, " 15 bob. Put back to get the money," could be heard in the court room. In the remaining barrow obstruction case there was no application for time to pay. Mr. Sutterthwick began to realise how closely a new magistrate was observed and how quickly the regular clientèle summed him up.

A battle with counsel

Charge Number 8 was a thin, sharp-featured man accused of being a suspected person loitering in the street with intent to commit a felony. Mr. Thawbry rose in counsel's seat as the prisoner was introduced and said: " I appear to defend in this case, sir. The plea is not guilty." Frell immediately began scribbling and, as the first witness, a detective inspector, finished taking the oath, the clerk passed a note up to the magistrate. With some astonishment Mr. Sutterthwick read: " Very quarrelsome and full of tricks. Needs careful handling." He did not know Mr. Thawbry but he felt he could safely assume that counsel would do his best to assist the court. He tore up the note and dropped it in the waste paper basket at his side.

The case for the prosecution, as revealed by the evidence of the detective inspector, was very plain and simple. With a detective constable, he had been keeping observation on a bus stop outside the railway station and had seen the defendant on five separate occasions push his way on to buses, then turn on the platform and push his way off, jostling people getting on as he did so. On two of these occasions, the inspector averred, the defendant's hand had gone inside a man's jacket in the direction in the breast pocket; on another occasion the hand went into the mouth of a woman's open shopping bag.

The case for the defence was equally plain and simple; it was that the police, knowing that the defendant unfortunately had previous convictions, had maliciously preferred this present charge and invented the incidents which supported it.

The cross-examination of the police witnesses was not so plain and simple; it ranged by tortuous paths over a wide field and, though asserted by Mr. Thawbry to be a painful duty cast on him, was conducted with zest. When something particularly reprehensible had to be imputed to the detective inspector, counsel usually prefaced his question with "Now, policeman." The officer, though fully conscious of his rank, had won it by too much experience to be rattled by these tactics, but Mr. Sutterthwick became increasingly restive. Finally he said: "I don't think that's a very courteous way of addressing the witness, Mr. Thawbry. After all he is a detective inspector."

"I don't see how it can be discourteous to call him a policeman, sir. Surely, that's what he is," said Mr. Thawbry belligerently, and added sarcastically: "However, sir, now that you've intervened on his behalf I shall, of course, respect your feelings in the matter." Mr. Sutterthwick reddened, and his lips tightened to restrain a rejoinder.

During the resumed cross-examination an excursion into the laws of optics and their relation to the witness's account of what he had seen led counsel to demand exactly where the officers were while keeping observation. "I must ask his worship's permission not to disclose that," said the detective inspector.

"I must ask his worship to compel you to disclose it," said Mr. Thawbry threateningly.

"What objection is there to giving the information?" the magistrate asked the officer.

"It would make future police observations difficult, and expose certain private individuals to . . . er . . . unpleasantness, your worship."

"I shan't at this stage direct the witness to answer your question, Mr. Thawbry," said the magistrate.

"Then the interests of the police are put above the interests of justice," protested counsel. "Your ruling completely frustrates my cross-examination, sir. I'm saying—and I make no bones about it—that the police couldn't have seen what they allege. How can the court decide the matter without knowing the place of observation? "

" I think I shall be able to arrive at a conclusion on the evidence as a whole," said Mr. Sutterthwick, holding himself in firmly.

" Very well, sir. I will leave the matter there for the moment. But I shall have some comments to make on it at the proper time and place. I shall ask no more questions of this officer. I see it is perfectly useless."

Mr. Thawbry sat down and the detective constable came into the witness box. His evidence in chief tallied exactly with that of his superior officer. Mr. Thawbry did not seem satisfied when the witness suggested that this was explained by the fact that they had both presumably seen the same things. There followed a searching cross-examination on the dress and personal characteristics of the men and woman alleged to have been jostled by the prisoner. In the course of this counsel said abruptly: " And you say that my client attempted to steal from the shopping bag of that last woman? "

" Yes, sir," said the detective firmly.

" Well, that's the end of this case, at any rate," said Mr. Thawbry triumphantly, turning to the magistrate. " As you know, sir, the Court of Criminal Appeal has said more than once that this Vagrancy Act charge must not be used if an actual attempted larceny is alleged. The police should charge attempted larceny or nothing at all, in that case." [2]

Mr. Sutterthwick thought for a second or two and then said: " Whether or not there was an attempted larceny is a matter of law which I have to decide—not the officer. I'm not satisfied on the evidence so far that the acts alleged against the defendant amounted to an attempted larceny. Perhaps if you continue with your cross-examination, Mr. Thawbry, you may succeed in convincing me that your client was attempting to steal."

" It's always the way in these courts," said Mr. Thawbry bitterly. " The police are never wrong. If they do make a mistake the magistrate finds a way out for them."

" That's a most improper observation to come from counsel," said Mr. Sutterthwick angrily, getting very red. " I must ask you to withdraw it."

" I see no reason to withdraw it, sir."

" Then please sit down. I refuse to hear you any further," said Mr. Sutterthwick still more angrily.

Mr. Thawbry sat down and an uncomfortable silence ensued.

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[2] See *R.* v. *Dean* (1924) 18 Cr.App.R. 133.

Finally Frell said, addressing the magistrate so that counsel could hear, "Perhaps, sir, there had better be a remand to give the defendant the opportunity of considering the matter of his legal representation." This brought Mr. Thawbry to his feet immediately. "I hope you're not going to allow the clerk to run this court, sir," he said. "My client is a poor man and would be seriously prejudiced by a remand. I don't want him to suffer for anything I may have said. If, as you seemed to suggest, sir, I have exceeded the duty counsel owes to the prisoner he is defending, then I am sorry."

"Please proceed with your cross-examination," said Mr. Sutterthwick icily.

"I hardly think it would serve much purpose, sir, in view of your recent remarks," replied Mr. Thawbry with similar iciness. "I will call my client straightaway if, as I assume, that is the case for the police."

The prisoner had up to now seemed a very insignificant figure in the proceedings. After he had given his evidence, his counsel, no doubt, wished he could have remained in his former obscurity, for, in several particulars, his story on oath was markedly at variance with the one which had formed the basis of the cross-examination. However, Mr. Thawbry, in his address to the court, ignored this aspect of this case and concentrated on the fact that one officer had said the woman was dressed in a black coat while the other said it was dark blue, and also they differed on whether or not one of the men was wearing a hat. In view of those contradictions in the evidence of the prosecution, its manifest improbability on general grounds and the straightforward way in which the accused had given his evidence, an acquittal, submitted counsel, was the only possible just verdict.

"I find the charge proved," said Mr. Sutterthwick briefly. "What is known about him?" It was revealed that the prisoner had two previous convictions for larceny from the person and one for gaming. He was a bookmaker's clerk by occupation.

"What are my powers?" mumured Mr. Sutterthwick to Frell.

"Three months or a fine of £25," the clerk murmured back.

"Is that all? Can't I send him to sessions for sentence?"

"No, sir. Section 29[3] doesn't apply because it's a summary offence; and there's no previous conviction as a Rogue and Vagabond which you can use to commit him as an Incorrigible Rogue."[4]

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[3] Magistrates' Courts Act, 1952.

[4] See the Vagrancy Act, 1824; *R.* v. *Johnson* [1909] 1 K.B. 439.

Mr. Sutterthwick was not sure that he knew what this meant but he assumed that the clerk knew. Addressing the prisoner he said: "I can't sentence you to more than three months' imprisonment. I certainly don't think you deserve a day less. So that is my sentence."

Mr. Thawbry leaned over, tapped Frell on the back, and thrust a paper into the clerk's hand. To the magistrate he said: "I've just served notice of appeal on your clerk, sir, and I make formal application for my client's release on bail pending the hearing."

Mr. Sutterthwick thought he was prepared for anything from Mr. Thawbry, by now, but he was taken aback by this. "You were expecting this, then, Mr. Thawbry?" he said.

"Yes, sir. My previous experience of this court had led me to fear the worst. I only ask you now to fix bail, sir."

"No," exploded Mr. Sutterthwick. "Certainly not. Not after what I've heard about your client."

"Very well, sir. We shall just have to apply to a judge in chambers."

Mr. Sutterthwick bent towards the clerk and whispered: "I suppose I can refuse bail?"

"Yes, sir. It's in your discretion. . . . But it's unusual to do so if the appeal is against conviction."

The magistrate reflected a moment and then said to the prisoner: "I mustn't let anything your counsel has said prejudice you. I shall allow you bail in your own recognisances in £50 and one surety in £50."

Wife beating

Mr. Sutterthwick felt the need for a period of quiet meditation after his exchanges with Mr. Thawbry but the efficient Mure gave him no respite. "Charge No. 9, Thomas Deedes" was in the dock ten seconds after the suspected person had left it. At the same time a middle-aged looking woman of thirty-seven was motioned forward to the witness box by a detective constable. Her eyes peered painfully and narrowly out of two large swellings of a dull purple colour which was turning to green at the edges. She had a cracked rib and other bruises also but they were not so spectacular. Mr. Sutterthwick was shocked; in his experience as counsel he had never seen black eyes looking quite so ghastly as these. The woman was the wife of the prisoner and he was charged with having maliciously caused grievous bodily harm to her. The detective requested the magistrate to deal with the case and the defendant readily consented to this course. "I plead guilty under provocation," he replied to the clerk's next question.

"What sort of provocation?" asked the magistrate sternly.

"She won't let me alone with her tongue, sir. I get no peace from morning to night."

"The law doesn't admit that as provocation for an assault," said Mr. Sutterthwick. "You do admit assaulting her so as to make her face in this state?"

"Yes, but it wasn't so bad as it looks; she bruises very easily."

"I must enter a plea of guilty," said Mr. Sutterthwick, and he turned to the detective for the facts of the case. They were very simple; the defendant had struck the prosecutrix several heavy blows with his fist in the course of a quarrel. He had previous convictions but only for obstruction with a barrow. The officer gave it as his opinion that there seemed to be domestic differences between the parties.

"What have you to say about this?" the prisoner was asked.

"There's nothing I can say, sir. Only you don't know what it's like—the life she leads me."

"Can't you even say you're sorry for brutally ill-treating this woman—after all, she is your wife, and only half your size."

"No; why should I say I'm sorry and let her crow over me," said Mr. Deedes defiantly; and added: "She only got what she asked for, with her nag, nag, nag."

Mr. Sutterthwick bent towards Frell and said: "What's the maximum for this?"

"Six months and/or £100," replied the clerk somewhat cryptically.

"Six months," announced Mr. Sutterthwick briefly.

Mure had conducted the prisoner through the door which led to Sergeant Chumbleton before Mrs. Deedes realised what had happened. "Oh, no!" she wailed, and burst into sobs.

"Oh, yes!" snapped Mr. Sutterthwick, and immediately wished he hadn't.

Taking depositions

He was glad that the next case did not require, at least in its preliminary stage, any intervention on his part. The defendant was charged with breaking and entering a garage and stealing a car therein. Frell proceeded to take the depositions of the witnesses. Listening quietly to the evidence made Mr. Sutterthwick feel more at home. He had been engaged as counsel in cases like this at sessions and assizes and he knew their shape. In fact he had on occasion felt that the depositions in a case he was conducting had not been well taken in the magistrates' court, and been embarrassed thereby in his handling of the prosecution. So now he began to pay careful attention to the clerk's examination of the witnesses; at the conclusion of the garage owner's evidence he realised that there had been an omission in the catechism appropriate to a case of this kind. He prepared to show that, though small summary cases might be unfamiliar territory, at least he knew where he was in indictable charges.

"Had anybody any authority to drive the car away?" he asked. The witness seemed not to understand and did not reply. When the question was repeated he showed considerable embarrassment and finally confessed: "Well, I suppose the hire purchase company had . . . You see, I've fallen behind in my payments."

It flashed through Mr. Sutterthwick's mind that perhaps the clerk had known about this and so deliberately avoided the question. Mr. Sutterthwick made a desperate attempt to retrieve the situation. "Well, is this man employed by the hire purchase company?" he said.

The witness had heard that some magistrates liked to make jokes; he felt that this must be one of them. With a dutiful snigger and a glance at the prisoner he replied brightly: "I shouldn't think so, sir, by the look of him."

Mr. Sutterthwick realised the hopelessness of the attempt, and Frell rammed the point home by saying severely to the witness: "Never mind what you shouldn't think. Do you know?"

The witness had to admit that he didn't.

The clerk's intervention had given Mr. Sutterthwick the moment he wanted to find a solution of the difficulty. The detective sergeant in charge of the case heard glumly that the magistrate would be satisfied if the police gave notice of additional evidence in respect of a witness from the hire purchase company. The officer's own evidence of an admission of guilt by the prisoner completed the case.

"Will you give the statutory caution, sir, or do you wish me to?" asked the clerk.

Mr. Sutterthwick was equal to this. "If you give me one of the forms you read from, Mr. Frell," he said, "I don't mind having a try myself."

The prisoner had heard the formula several times before, and paid little attention to it. When it was over he spoke for the first time in the proceedings. "I reserve my defence, sir," he said, with a professional air.

Mure led him away and Sergeant Quing announced: "That's the last case in your worship's morning list."

"Stand up, please," he called to the court room at large as the magistrate got to his feet. Mr. Sutterthwick had bowed and, with

Frell following, walked off the bench before the remnant of his audience had finished rising.

Relief

Mr. Sutterthwick had the impression that a tremendous lot had happened to him since he first entered the court room a bare two hours ago. It seemed to have been a morning crammed with incident and variety.

"Having no remands made it quite a comfortable list, sir. That means we can have a proper lunch, for a change," remarked Frell. Mr. Sutterthwick made a non-committal noise and decided that the clerk lacked imagination. It occurred to him that his difficulty in his new work would not be, as he had thought, to prevent its becoming a routine exercise but to prevent its becoming an obsession. He could not get out of his mind the cases he had dealt with that morning. In confused succession a vivid, speaking procession of people concerned in them kept filing through his memory; and some of the recollected figures brought feelings of dissatisfaction with himself.

"Do you think I was too hard on that chap who'd assaulted his wife?" he suddenly asked Frell as they went upstairs.

"Well, sir, giving him six months doesn't leave much margin to mark a more serious case."

"I suppose there are more serious cases," mused Mr. Sutterthwick. "But I must say I can't stand brutes who knock women about. . . . Could I alter my sentence now?"

"I don't think there would be any objection if you had him up again at 2 o'clock. It would still be the same sitting of the court."

"But my first sentence wasn't a nullity, Mr. Frell."

"No, sir," said the clerk, seizing the allusion. "But this would be an alteration in favour of the defendant. That makes a difference."

"Anyway, whether it's right or wrong, I propose to reduce the sentence. . . . I think perhaps I'd let Mr. Thawbry rattle me. I hope there aren't many like him coming to this court."

"No, he's pretty well unique. . . . Quite an able fellow really, if he'd only use his abilities in the right way."

Mr. Sutterthwick grunted incredulously. "Well, thank you for your help, Mr. Frell," he said, as he reached his door. "I've learned a few things this morning."

"There's a lot to learn about the job," said the clerk.

"I've been learning about myself as well," said Mr. Sutterthwick.

Approved Schools for Girls

By Rex Cowan, ll.b., *Solicitor*

Delinquency in the adolescent girl presents a variety of problems differing in nature from those present in her male counterparts. Society frequently tolerates or condones anti-social behaviour in boys; it is considered by some to be an unfortunate but understandable element in the process of development. The girl who commits a crime, however, often encounters a hostile and unsympathetic attitude from the community in which she resides. Her behaviour is not condoned, nor is it understood. She is stigmatised as a social pariah, and considered an abnormal deviate from the accepted behaviour patterns of her neighbours. The reason for this may be found in the nature of her activities. For although her record will frequently show the reason for her committal as larceny, this is often only a single brush stroke on a large canvas. The picture in its entirety is one of aggressive, sometimes violent behaviour, irrational, hysterical reactions, and sexual promiscuity or " larval " prostitution. It is this last symptom which arouses the greatest public distaste. Of 102 girls, mainly over the age of fourteen years, admitted to a classifying school during one six month period, only fifteen were virgins, and five of these were doubtful. Although the incidence of venereal disease is not overtly high, infections associated with sexual intercourse are frequently found in appreciable numbers of approved school girls. Besides the emotional and sexual difficulties there are biological and physical ones to contend with. Adolescence is a time of radical, physical and psychological upheaval and change; pre-menstrual tension it is thought has a relationship to certain anti-social and delinquent behaviour, and cerebral disrhythmia of a non-epileptic form and thyroid disturbances produce similar aberrated behaviour. All these are problems which the girl brings with her to the approved school. All must be met, and if possible solved before her discharge. The following will describe the facilities for coping with this task.

Classifying and training schools

During 1953 there were 1,474 girls from ten to nineteen years of age residing in approximately forty approved schools in England and Wales. The control of such schools is divided between a local authority managing committee, or if the school is privately run, a board of managers, on the one hand, and the Children's Department of the Home Office on the other. The Home Office, who issue the school with a certificate of approval, maintain a full inspectorate who pay frequent visits to the school, in addition to those of the members of the managing committee. The typical school is a large manor type house, usually with extensive private grounds, providing accommodation in small dormitories for the girls. Few of the buildings have been specifically built for the purpose, but many have undergone considerable structural alteration. The schools are small by comparison with those for boys, and generally house between twenty and forty girls. Treatment and training is therefore of a highly individual and personal nature. Junior schools house girls from ten and a half to fifteen years, intermediate from twelve to fifteen years, and senior from fifteen to nineteen years. After committal by a juvenile court, the girl is sent to a classifying school for a period of six weeks. Two such schools serve the whole of England and Wales. The Shaw in the North, and the Magdalen Hospital in the South. Together they take approximately 600 entrants a year (651 female children and young persons were committed during 1953). The purpose of the classifying school is threefold; to settle the girl's immediate personal and medical problems (many girls are admitted suffering from mild complaints, usually neglected and untreated), to prepare her for the forthcoming period of training in an ordinary approved school, and to observe her behaviour, needs and abilities, so that she may be sent to the school most suitable for her needs and temperament. This last function, a diagnostic one, consists of a series of medical, psychological and educational tests and examinations, a close examination of the child's family background and school record, and includes the personal observations of the members of staff who come into contact with the girl. For those who are suffering from venereal disease, where the medical treatment cannot be completed at the classifying school, there are special treatment schools, where full time medical care is given in addition to the normal activities. After the girl has been tested by these methods, she will be allocated to the appropriate training school. It would be true to say that the atmosphere and personality of any approved school is largely conditioned by the attitude and capability of the headmistress or warden. For this reason the large number of schools for girls gives a wide variety of choice to the classifying school and allows greater flexibility in selection. Most schools provide educational training on the premises for girls under school leaving age or those who for special reasons need further educational instruction. This is given usually by a full time resident teacher, but sometimes it is necessary for girls to have lessons at outside ordinary schools. The average intelligence quotient (I.Q.) of an approved school girl varies yearly between eighty-nine to ninety-two, and by comparison with the average non-delinquent's I.Q. is not particularly low. However cultural and emotional influences make this rough comparison unreliable. But there is frequently a low standard of scholastic attainment and when this is so, more intensive educational instruction is necessary. In addition there are regular courses in handicrafts, home making, cooking, dancing, dressmaking, and the use of cosmetics. These are taught by resident domestic science teachers. The girls, under supervision, do most of the housework, laundry and cooking for the school. There are also evening classes in subjects such as music, and current affairs. In general there is an attempt at what might be termed, "character building," the introduction of social and ethical standards to the girls by the sympathetic and individual approach of members of the staff, who include besides the wardens and teachers, matrons, housemistresses and cooks. The importance of this personal contact in retrieving the girls' dignity and self-respect can never be minimised.

Psychiatric treatment in school

The chief cause of delinquency in girls is probably an emotional one. Their sexual promiscuity, violence, and sullen depression are only symptoms of a deep rooted emotional lack of balance. This view receives some confirmation in the fact that for the past five years full time treatment in an approved school has been given to neurotic adolescent girls. The treatment has been integrated into their training programme. Another school for senior girls, shortly to open, will deal with non-neurotic girls suffering from personality disorders. There are no similar schools for boys. Many ordinary training schools have a visiting psychiatrist, one or two a part time psychiatric social worker. Some form of psychiatric treatment should be available in every school for those whose reports from the classifying centres show them to have abnormal personalities.

After care

The statutory duty for after care is vested in the school managers. It is their duty to ensure that a girl receives care during the time she is released on licence. A committal order provides for a period of detention of three years, or where the child is under twelve years four months at date of committal until she is fifteen years four months old. At any time during the committal period, the girl may be released upon licence by the managers, who are obliged to review each girl's case at intervals to ascertain her suitability for licensing. To licence before one year's detention has elapsed requires the consent of the Home Secretary. After the committal order has expired, statutory supervision commences which lasts, for those released before fifteen years of age, until they are eighteen, and for others for three years, or until twenty-one, whichever is the shorter. During this latter period the managers may recall the child, but she cannot be detained beyond the age of nineteen in an approved school. They also have less control over her movement and behaviour than during the former period. The time spent under licence and supervision is of vital importance. The girl may have been improved mentally and physically at the school, but if she returns to an unsatisfactory home or work environment, without proper preparation and adequate help and guidance, she will soon fail and revert to her previous behaviour. It is now appreciated that after care must begin when the girl's period of detention begins. To this extent the term is a misnomer. The liaison between the psychiatric social worker (or ordinary social worker) and the school staff can be used to prepare both the girl and her parents for her forthcoming release. Only when the delicate family situation has been fully investigated will the managers know when it is safe to licence a girl. A satisfactory job must be obtained, clothes provided and other necessary articles bought, and a future husband carefully scrutinised for his suitability.

All this and a host of other tasks are performed by the after care officer appointed by the managers. She may in some cases be the school headmistress or a special welfare officer, or alternatively a local probation officer or children's officer will be appointed. Regular reports are submitted to the managers, who may upon recommendation recall the child if the situation is unsatisfactory. During the whole period of detention before supervision there should be a bridge between the girl and the environment she will shortly join as a free citizen.

Advocacy at Petty Sessions

By B. Fraser Harrison, *Solicitor*

Domestic Proceedings

(*Continued from p.* 556)

Grounds for an order

Any married woman may apply to a court of summary jurisdiction for an order under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895–1949, if her husband:—

(a) has been convicted summarily of an aggravated assault upon her within the meaning of section 43 of the Offences against the Person Act, 1861.

(b) has been convicted upon indictment of an assault upon her and sentenced to pay a fine of more than five pounds or to a term of imprisonment exceeding two months.

(c) has deserted her. Unlike the requirements of the Divorce Court, where there has to be a period of three years continuous desertion immediately prior to the presentation of the petition, no minimum period of desertion has to pass before the magistrates are asked to issue a summons.

(d) has been persistently cruel to her or to her children.

(e) has wilfully neglected to provide reasonable maintenance for her or for such of her infant children as he is legally liable to maintain.

(f) is a habitual drunkard as defined by section 3 of the Habitual Drunkards Act, 1879, or a drug addict.

(g) while knowingly suffering from a venereal disease, insisted on having sexual intercourse with her.

(h) has compelled her to submit to prostitution.

(i) has committed adultery.

A husband may apply for an order on the grounds that his wife:—

(a) has committed adultery.

(b) is a habitual drunkard as defined by section 3 of the Habitual Drunkards Act, 1879, or a drug addict.

(c) has been persistently cruel to his children.

Jurisdiction

The application for an order may be made to any court of summary jurisdiction acting within the city, borough, petty sessional or other division or district in which the cause or complaint wholly or partially arose, or in which the woman or her husband ordinarily resides, except in the case of a woman who applies for an order on the ground of the conviction of her husband upon indictment of an assault upon her. In such a case she shall apply to the court that convicted him and that court, for this purpose, shall become a court of summary jurisdiction and the judge will hear the application without a jury.

Powers of the court

Having decided that the allegations are proved a court may make an order containing all or any of the following provisions:—

(a) That the applicant be no longer bound to cohabit with his or her spouse.

(b) For the legal custody of any child of the marriage between the applicant and her husband or his wife.

(c) That the husband shall pay to the wife personally, or for her use to any officer of the court or to any third party such weekly sum not exceeding two pounds if the husband is the applicant, and if the wife is the applicant, not exceeding five pounds and a weekly sum not exceeding thirty shillings for the maintenance of each child of the marriage whose custody is by the order committed to her until the child attains the age of sixteen years.

By section 2 of the Married Women (Maintenance) Act, 1949, the court may extend the period during which the husband pays maintenance in respect of a child of the marriage for a period, not exceeding two years from the date of the order, and, by subsequent orders, may further extend the period (but not beyond the date on which the child attains twenty-one), if the child is or will be engaged in a course of education or training after the age of sixteen.

(d) For payment by the applicant or his or her spouse or both of them of the costs of the court and such reasonable costs of either of the parties as the court thinks fit.

Non-cohabitation Clause

Many a long suffering spouse desires peace more than anything else and yet does not want to give her husband complete freedom or has not been deserted long enough to entitle her to divorce him, so she asks for a separation order to ensure that her husband leaves her alone. No matter what a client believes today, however, in the future she may desire to divorce her husband. If his offence is cruelty or adultery a separation order does not, of itself, preclude her from presenting her petition, but should she be deserted, a separation order will stop the period of desertion from running, because her husband will remain away from her, not wilfully, but by reason of the court's order. A deserted spouse should be advised, therefore, against asking for a separation order unless she is really certain that she will not regret it later.

Children

When a husband has been summoned by his wife and not only desires to defend the allegation made by her, but also wishes to have custody of a child of the marriage, he should apply for a summons under the Guardianship of Infants Acts, to be returnable on the same day as his wife's summons, so that, should his wife not succeed, there is a chance he may be given the custody of the child. If the latter is young, or a girl, it is unlikely that the child will be given into the father's custody unless the influence of the mother will be positively harmful.

Payment of Maintenance

It is always to the benefit of the husband and the wife for the maintenance to be paid to an officer of the court. There can then never be any dispute as to the amount of the arrears, if any.

Variation and discharge of an order

In addition to their powers to make an order, the magistrates may also vary or discharge one they have already made if fresh evidence is brought before them. The application is made, again, by complaint to the court which made the original order.

If the income of either party has varied since the making of the last order either party may apply; and if the wife has resumed cohabitation with her husband the order ceases to have effect and if she has committed adultery, the court may discharge the order. It is important to note that if a husband has divorced his wife his obligations to pay maintenance under a magistrates' order do not automatically cease; he has to apply to the magistrates for it to be discharged. The husband will remain liable to maintain any child of the marriage whatever matrimonial wrong his wife may commit.

Adultery

There are no pleadings in a domestic dispute, nor is either party compelled to give particulars of the offence except when adultery is alleged, when full particulars of the allegation must be given to the other party a reasonable time before the hearing: *Duffield* v. *Duffield* [1949] 1 All E.R. 1105.

Appeals

Rule 71 of the Matrimonial Causes Rules, 1950, regulates the practice of appeals under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, against an order made, or against the refusal to make an order. The appeals are heard by a Divisional Court of the Probate, Divorce and Admiralty Division.

The appeal is by notice of motion stating the grounds of appeal and whether all or part only of the order is complained of. The notice, which is an eight-day notice, has to be served on every party affected by the appeal, and on the justices' clerk of the court from which the appeal is brought. The appeal is entered by lodging at the Divorce Registry two copies of the notice of motion. At the same time there are lodged two certified copies of the summons and of the order appealed against, two copies of the justices' clerk's notes of the evidence, and two copies of the reasons of the justices for their decision. It is the appellant's solicitor's task to obtain the clerk's notes and the justices' reasons.

The notice of motion must be served and the appeal entered at the Divorce Registry within twenty-one days from the day when the magistrates' order was signed or otherwise perfected, or from the date of the refusal of an order, and it is important to note that not less than seven days before the date of the hearing of the appeal the appellant must lodge with the Divorce Registry a certificate that the notice of motion has been duly served on the respondent to the appeal. Obviously this step is best taken as soon as the notice is served; then it will not be overlooked.

The Divisional Court has power to extend the time for appealing or give leave for the grounds of appeal to be amended.

Apart from preparing the brief no further steps have to be taken until the date of hearing.

Bastardy

Although affiliation proceedings are not "Domestic Proceedings" within the meaning of the Magistrates' Courts Act, 1952, they are another matter with which the magistrates' courts have to deal.

By section 51 of the Magistrates' Courts Act, 1952, an application for a summons is made by way of complaint, which, if made before the birth of the child, must be substantiated on oath. The complaint cannot be heard other than by the court for the petty sessional area in which the mother resides, unless her residence be in Scotland or Northern Ireland, in which case, under section 3 (2) of the Maintenance Orders Act, 1950, the court for the area in which the putative father resides has jurisdiction.

The principal Acts dealing with this subject are the Bastardy Laws Amendment Act, 1872, the Bastardy Act, 1925, and the Affiliation Orders Act, 1952.

Three categories of women may apply for a summons against an alleged father; a single woman, a widow, or a married woman living apart from her husband.

A woman may apply either:—

(a) Before the child is born.
(b) Within twelve months next after the birth of the child.
(c) At any time after the birth of the child upon proof that the alleged father has within twelve months next after the birth of the child paid money for its maintenance.
(d) Within twelve months next after the alleged father's return to England, upon proof that he ceased to reside in England within twelve months next after the child's birth.

If the application is made prior to the child's birth the summons is made returnable after the presumed date the child will be born.

Before an order may be made the mother's evidence must be corroborated in some material particular and, because it is not a criminal charge, the putative father may be called as a witness for the mother, but if this is done, his answers to questions put by the mother's advocate must be accepted and his own advocate will be able to cross-examine his own client.

If the applicant is a married woman living apart from her husband, corroborative evidence that he has not had intercourse with her during the period of conception must be called. This is because a child born of a married woman is presumed to be the child of her husband unless the contrary is proved. In this respect the mother's husband is a competent, but not compellable, witness.

Scotland and Northern Ireland

If the husband or putative father of a child of a client resides in Scotland or Northern Ireland it is possible to register a domestic order made by an English court in a court in those countries and thus enforce payment: Maintenance Orders Act, 1950, s. 16.

Appeals

By section 83 (4) of the Magistrates' Courts Act, 1952, a putative father may appeal against an order made by the magistrates; or a mother against their refusal to make an order; and either party may appeal against the revocation, revival or variation of an order. In each case the appeal lies to quarter sessions.

The procedure to be adopted, including the notices, times for giving them, and the abandonment of the appeal are the same as in an appeal to quarter sessions against the magistrates' decision upon a criminal matter (see p. 493).

For the purpose of calculating the period of fourteen days the order is considered as being made when the justices verbally announce their decision and not on the day when the written order is subsequently made out and signed.

The appellate court may make any order it thinks fit.

It should be noted that any moneys the magistrates ordered the putative father to pay are payable pending the appeal.

The Coroner's Court

A solicitor may appear as an advocate in the Coroner's Court on behalf of a person who, in the opinion of the coroner, is a properly interested person. By the Coroners' Rules, 1953 (S.I. No. 205) the police are only entitled to examine a witness by counsel or solicitor. He may, perhaps, appear there to represent the relatives of a deceased, hoping to extract a damaging statement from the car driver upon which to found a civil claim, or on behalf of the motorist, to protect him from a subsequent prosecution or claim.

In whatever capacity he appears the solicitor must remember that he is there only at the discretion of the coroner. The duty of the coroner and his jury is solely to discover the cause of death and they are only concerned with criminal affairs if they decide that the person who caused the death was guilty of manslaughter or murder.

Most coroners will permit witnesses to be cross-examined to a reasonable extent, but will not allow an advocate to embark upon a complete "fishing expedition." Because no witness at an inquest is obliged to answer any question tending to incriminate himself coroners frequently protect the motorist by merely asking him to confirm the statement that he made to the police and not subjecting him to cross-examination.

As in any other court an advocate is wise to limit his questions, because the replies, in his favour and otherwise, are recorded.

Only those witnesses who have made it clear that they are wholly biased in favour of the other side should be examined. The others, who are independent or are already known to be favourable to one's own client, are much better seen and questioned in the privacy of the office.

Practice and Procedure

Magistrates' Courts

Change of plea after committal to quarter sessions for sentence

The case of *R.* v. *Murphy* recently heard at Lowestoft, raised a question of some interest concerning the power of a magistrates' court to allow a change of plea after a committal for sentence under section 29 of the Magistrates' Courts Act, 1952.

The defendant Murphy was charged with larceny of a jewelled ring at Lowestoft between March 1 and May 1, 1955. Murphy had several previous convictions and on conviction for the offence charged would be liable to corrective training. The case came on before the Lowestoft Borough Justices on May 17, 1955, when the defendant elected to be tried summarily and pleaded guilty. The justices then heard the case and decided in view of the defendant's bad record to commit him to the East Suffolk Quarter Sessions Appeals Committee for sentence. The defendant was due to appear before the Committee on May 23, 1955.

As a result of an application for legal aid to the prison governor he was granted a defence certificate by the deputy chairman of quarter sessions, Sir Cecil Oakes. On the same day as he appeared before the Lowestoft justices, *viz.*, May 17, 1955, Mrs. Murphy made a statement to the probation officer assuming responsibility for the theft or at least major complicity, and her version of the matter, if true, at least raised some serious doubts as to the guilt of her husband. Whilst his past record was heavily against him, there was a possibility that an innocent man might be sentenced or at least the prosecution thrown into question if nothing was done to try and clarify the position.

The defendant appeared before the Appeals Committee on May 23, 1955, and was represented by counsel. The wife was also present at the court in case the Committee decided to allow her to give evidence, although how she could be heard was much to be questioned. The prosecution and defence were *ad idem* that the situation was most unsatisfactory and counsel for the prosecution referred to the existence of the wife's statement in his address to the court. The deputy chairman then asked both counsel to agree with him that he had inherent jurisdiction to return the case to the Lowestoft Bench so that the defendant might have an opportunity to change his plea before them. Both counsel agreed that the Appeals Committee had inherent jurisdiction to return the case to the court of summary jurisdiction. The deputy chairman then granted a legal aid certificate to enable the defendant to be represented before the Lowestoft Bench.

An interesting side issue at once arose upon the question of custody until the Lowestoft Bench heard the case. The warrant committing the defendant to prison pending his appearance before the Appeals Committee was in accordance with the form laid down in the rules for a section 29 committal for sentence, but on its own phraseology it appeared to have spent its effect. A fresh warrant was prepared by the clerk of the peace and signed by the deputy chairman ordering the prison governor to hold the defendant until dealt with by the (Lowestoft) Bench or the Appeals Committee according to law. An order was made by the court and drawn up and issued under the hand of the deputy clerk of the peace "that the matter be remitted to and dealt with by the (Lowestoft) Court of Summary Jurisdiction."

Application was made by counsel to the Lowestoft Bench for the defendant to be brought before them in pursuance of the order of the Appeals Committee. The Bench which heard the application on June 2, 1955, was constituted as previously on May 17, 1955, when the defendant first appeared before it.

Counsel outlined what had happened before the Appeals Committee and invited the Bench to agree with him that there was no need for an address on jurisdiction from him in view of the Appeals Committee's order which he contended was sufficient to enable the Bench to give leave for the defendant to make his application. After conferring with their clerk the Bench decided that they needed to hear further arguments as to jurisdiction.

Counsel then referred to the paucity of authorities dealing with the comparatively recent procedure as to committal for sentence under the Criminal Justice Act, 1948, s. 29, and Magistrates' Courts Act, 1952, s. 29. Reference was then made to *R.* v. *McNally* [1954] Crim.L.R. 631 as authority for the discretionary power to allow changes of plea. *R.* v. *Campbell, ex p. Hoy* [1953] 1 Q.B. 585 was cited as authority that power existed up to the time of sentence for a court of summary jurisdiction to allow a change of plea. It was then contended that the defendant had not been sentenced, this on the strength of *R.* v. *London Sessions, ex p. Rogers* [1951] 2 K.B. 74, wherein it was held that committal under section 29 of the Magistrates' Courts Act, 1952, was not a "sentence." The clerk of the court then asked if the application sought a revocation of the committal for sentence but counsel stated that he was applying for the case to be re-opened and in view of the order of the Appeals Committee and the state of the general law the court had the necessary power.

The case of *R.* v. *Savage and Torch* [1955] Crim.L.R. 191 was then cited with the admission that it was not a binding authority. The clerk also asked that the commentary on that case be also read and this was done. *R.* v. *Durham Quarter Sessions, ex p. Virgo* [1952] 2 Q.B. 1 was then cited, as it had been referred to in the commentary to *Savage's* case. The clerk then drew attention to the fact that that case was on the statutory power to remit when the Appeal Committee were hearing an appeal as such. The Bench were then invited by counsel to allow the defendant to apply to them to change his plea and the defendant would then elect to go for trial. The clerk then questioned the position in such event in view of *R.* v. *Sheridan* [1937] 1 K.B. 223, and the possibility of the plea of autrefois convict. Counsel suggested that any trial before the quarter sessions on a changed plea would be a trial *de novo.* The solicitor for the prosecution then offered no objection to the application by the defence. After retirement the chairman stated " the application is refused and we make no order for the rehearing by this court." In reply to counsel's question as to the ground upon which the application was refused, she replied " solely on the jurisdiction point."

The defendant was still in custody and there is no method of obtaining bail in such circumstances as section 37 of the Criminal Justice Act, 1948, does not cover such circumstances and there is no inherent power in the High Court to grant bail to persons who have been convicted and committal under section 29 of the Magistrates' Courts Act, 1952, demands conviction before committal.

The prosecution intimated to the defence that they would seek an order for mandamus directed to the Lowestoft Justices, but apparently they were advised that they were not aggrieved by the Lowestoft Bench's refusal. The defence then prepared to seek mandamus, and a legal aid certificate under the Legal Aid and Advice Act, 1949, was obtained on the defendant's behalf from the Law Society.

Before anything could be done in pursuance of the legal aid certificate for mandamus against the Lowestoft Justices the prosecution and defence were notified that the case would again come before the Appeals Committee of Quarter Sessions on June 27, 1955. After consultations with the defendant, and on his instructions, the Appeals Committee (as previously constituted) were addressed in mitigation and the defendant was sentenced to six months' imprisonment and the previous order made by the committee was revoked by it. The somewhat unsatisfactory ending of the case is accounted for by the fact that the defendant was anxious to get the matter over and disposed of and also in view of the fact that even if he had been allowed to change his plea and the wife's version accepted there was a definite risk that he might be convicted as an accessory.—[J. F. F. MILLER, *Solicitor*.]

Bail

The Home Office have issued Circular No. 132/1955 dated September 8, 1955, setting out verbatim the judgment of the Court of Criminal Appeal in *R.* v. *Wharton*. The gist of this judgment is contained in the report of the case at p. 565 of the *Criminal Law Review*.

Summary Justice

Animals

Boar. Keeping a boar without a licence; thought restrictions had been abolished; fined £2; Neighbour: Uxbridge Magistrates' Court (*Evening Standard*, August 11).

Dog. Removing dog from quarantine; fined £35 and ordered to pay costs; Curtis: Wallington Magistrates' Court (19 *Journal of Criminal Law* 205).

Cruelty. Terrifying horse tethered in a field by setting fire to undergrowth; fined £5, ordered to pay £2 2s. costs; Baxter: Southend Magistrates' Court (*Manchester Guardian*, August 25).

Cruelty. Cruelly beating a horse and overdriving it; sentenced to a month's imprisonment on each charge; Saunders: Beaconsfield Magistrates' Court (*Evening Standard*, August 16).

Aviation

Airport. Driving car into the manoeuvring area at London Airport without permission and failing to give way to an aeroplane; fined £10; Uxbridge Magistrates' Court (*Evening Standard*, August 9).

Children

Neglect. Neglecting four children in a manner likely to cause them suffering; farm labourer decided to stop working and live as vagrant; children maintained by county council; sentenced to six months' imprisonment; Traves: Bridlington Magistrates' Court (*Manchester Guardian*, September 1).

Customs and excise

Evading duty. Attempting to evade Customs duty on a refrigerator and making an untrue Customs declaration; fined £500; Taylor: Liverpool Magistrates' Court (*Manchester Guardian,* August 27).

Evading duty. Attempting to evade duty of £23 and purchase tax of £35 on a mink cape and a watch; fined £60; Van de Molen: Southampton Magistrates' Court (*Evening Standard,* August 24).

Elections

Using unregistered car. Taking people to polling booths in cars not registered with the returning officer; each defendant fined £2; Greenwood, Atherton, Lewis, Wood, Israelite: Manchester Magistrates' Court (*Manchester Guardian,* September 1).

Failing to display certificate of registration with the returning officer on car used to take voters to polling booth; fined 5s.; Zucker: Manchester Magistrates' Court (*Manchester Guardian,* September 1).

Firearms, explosives and offensive weapons

Explosives. Failing to keep records of the nature and quantity of explosives, detaining War Department property, possessing a firearm without a firearms certificate; keeping explosives in an unauthorised place; explosives kept in sheds in very dangerous state; fined £5 on each of the first three charges, £10 on the last, and ordered to pay £5 13s. costs; Stafford: Mansfield Magistrates' Court (*Manchester Guardian,* September 1).

Offensive weapon. Boy, aged fifteen, carrying a five-inch sheath knife; fined £10, knife confiscated: Chester-le-Street Juvenile Court (*Manchester Guardian,* August 24).

Possessing an offensive weapon, namely, a large cosh with a bamboo handle and a lead-loaded end covered with canvas; sentenced to one month's imprisonment; Kakraba: Marlborough Street Magistrates' Court (*Evening Standard,* August 23).

Housing

Overcrowding. Allowing a man, his wife and five children to live in one room; fined £3; Osuch: Bedford Magistrates' Court (*Daily Mail,* September 1).

Larceny, etc.

Electricity. Unlawfully obtaining electricity by crossing meter's terminals with wire after supply cut off for non-payment of bill; fined £3, ordered to pay £2 6s. costs, with alternative of one month's imprisonment; Dobson: Solihull Magistrates' Court (*Birmingham Mail,* September 6).

Lost property. Bus conductress failing to hand in cigarette-lighter left by a passenger on her bus; fined £2, ordered to pay

£1 10s. costs; Berenger: Birmingham Magistrates' Court (*Birmingham Evening Despatch*, September 6).

Local by-laws

Walking on grass. Walking on marram grass newly planted to strengthen sand hills on Norfolk coast; fined £5; in future cases maximum penalty of £20 to be imposed; Mortram: North Walsham Magistrates' Court (*The Times*, August 16).

Medicine

Selling without prescription. Chemist selling a penicillin veterinary preparation without a prescription; fined £20; Lockett: Ilfracombe Magistrates' Court (*Manchester Guardian*, August 16).

Forging prescription. Obtaining sulphate tablets, valued at 3s. 4d., by means of a forged prescription, and attempting to obtain tablets by similar means; fined £2 on each of three charges; Leahy: Wellington Magistrates' Court (*The Times*, August 16).

National assistance and insurance

False claim. Making a false claim for national assistance; fined £10; Abrahams: Tottenham Magistrates' Court (*Evening Standard*, August 25).

Failing to return card. Failing to return insurance card within six days after it had ceased to be current, and failing to pay insurance contribution as a self-employed person; fined £5 on each summons, ordered to pay £7 8s. 11d. arrears; Griffin: Dartford Magistrates' Court (*Evening Standard*, August 25).

Failing to pay contribution. Failing to pay a National Insurance contribution and failing to return insurance card; previous conviction; fined £10; Cole: Nuneaton Magistrates' Court (*Birmingham Evening Despatch*, September 1).

Poaching

Trout. Youths poaching trout, using breathing apparatus for diving and home-made spears; each fined £1; Dorchester Magistrates' Court (*Evening Standard*, August 8).

Probation

Condition. Boy, aged ten, who received £1 a week pocket money, stealing rags; placed on probation, condition of probation being that he should receive less pocket money: East London Juvenile Court (*Manchester Guardian*, August 30).

Railways and ships

Trespassing. Four boys trespassing on railway; said to have been train-spotting; complaints made by train drivers; each fined 10s.: Romford Juvenile Court (*Evening Standard*, August 10).

Boarding ship. Boarding the liner *Queen Elizabeth* without the permission of the master; fined £5; Simmons: Southampton Magistrates' Court (*Evening Standard,* August 9).

Stowaway. Stowing away in liner at Capetown on July 29; fined £10; Stares: Southampton Magistrates' Court (*Evening Standard,* August 12).

Road traffic

Traffic lights. Horse and cart passing traffic lights showing red; man could not stop horse in time; fined £1; Fairs: Mortlake Magistrates' Court (*Evening Standard,* August 16).

Speeding. Driving fully laden London Transport bus at 40–45 miles per hour; fined £4; Wild: Bearsted Magistrates' Court (*Evening Standard,* August 31).

Defective brakes. Two fathers permitting children to ride bicycles without efficient brakes; first fined 15s., second 10s.; Carter, Mann: Taverham Magistrates' Court (*Daily Mail,* August 26).

Driving test. Qualified driver taking driving test in the name of his friend, charged with obtaining a certificate of competence to drive by false pretences, and with using a provisional licence with intent to deceive; fined £25 on each charge; Gill: Southend Magistrates' Court (*The Times,* August 13).

Insurance. Permitting use of vehicle without adequate third party insurance; insurance policy covering "any driver," defendant thought this included his brother although latter had no driving licence; his bona fide belief special reason for not disqualifying defendant: North London Magistrates' Court (19 *Journal of Criminal Law* 195).

Drunk in charge. Drunk in charge of a vehicle; driver went to sleep in back seat; fined £20, ordered to pay £4 4s. costs; his action special reason for not disqualifying him; Wilson: Old Street Magistrates' Court (*Evening Standard,* August 25).

Drunk in charge. Drunk in charge of a car; motorist stopped and turned into side road when he felt overcome by the effects of alcohol; fined £10, ordered to pay £11 11s. costs; his action special reason for not disqualifying him; Hawkins: North London Magistrates' Court (*The Times,* July 30).

Sale and trade

Auction. Conducting an auction in premises not registered under the Brighton Corporation Act, 1954; fined £20; Walters: Brighton Magistrates' Court (*The Times,* August 19).

Case and Comment

The reports of cases to which initials are appended hereunder have been specially prepared for *The Criminal Law Review* by the following reporter:—

HENRY PALMER, *Barrister-at-Law.*

Court of Criminal Appeal—*Power to quash conviction.* See R. *v.* ABBOTT, p. 646, below.

Evidence—*Admissibility—letters between husband and wife*

R. *v.* TROTT[1] (City of Exeter Quarter Sessions: J. T. Molony, Esq., Q.C., Recorder: July 5, 1955).

T. was accused with two others of having broken and entered warehouse premises in the city of Exeter and there stolen a large quantity of cigarettes. T. pleaded "not guilty." The prosecution gave notice to the defendant that they intended to put before the court a number of letters written by T., while he was in custody, to his wife. The facts relating to the letters were that T., while in custody on this charge, had written from prison a number of letters to his wife with the object of fabricating an *alibi* to show that he was not in Exeter but in Bristol at the time of the breaking and entering. The first and subsequent letters were intercepted by the prison censor and, in view of their contents, they were forwarded to the Home Office. The assistant governor of the prison, who was called by the prosecution to prove the letters, admitted in cross-examination that T. was not told that his first or subsequent letters had been intercepted until long after they had been sent to the Home Office. In the absence of the jury the defence objected to the admission of the letters and, whilst agreeing with the prosecution that following the rule in *Shenton* v. *Tyler* [1939] Ch. 620 the defence could not rely on section 1 (*d*) of the Criminal Evidence Act, 1898, suggested that the court could use its discretion to exclude the letters as having a prejudicial effect on the prisoner which outweighed their probative value. It was submitted that there was authority for such a course being taken in the decision of the House of Lords in *Harris* v. *Director of Public Prosecutions* [1952] A.C. 694.

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[1] For the prosecution: *Norman Skelhorn Q.C., Hugh Park* (instructed by McLusky & Braddell, Exeter). For the accused: *W. H. Ewart James* (instructed by Tucker & Hilton, Exeter).

Held, that the letters should be admitted. Although the letters were privileged communications as between husband and wife they could be proved by a third party into whose possession they had come. The Recorder did not feel that this was a proper instance in which he might exercise his discretion to exclude the letters since he did not feel that their prejudicial effect was out of proportion to the relevance of the evidence contained in them.

[L. King Lassman, *Barrister-at-Law.*]

COMMENTARY. There appears to have been no reference in this case to the decision in *R.* v. *Pamenter* (1872) 12 Cox C.C. 177, where Kelly C.B. rejected a letter written by a prisoner to his wife and entrusted to a constable who opened it.

See Phipson on *Evidence,* 9th ed., 212–3.

Evidence—*Admissibility—murder—admissibility of evidence of another offence*

R. *v.* LUMELINO [2] (Court of Criminal Appeal: Hallett, Pearce and Havers JJ.: August 16, 1955) (*The Times,* August 17, 1955).

L. was convicted of murder at Maidstone Assizes. The deceased, who was a builder engaged by L. to carry out some alterations at a café he was arranging to purchase, was found dead at the café, and there was evidence that L. was there at about the same time as the murder was committed. In the course of his defence, L. suggested that he himself had been assaulted and robbed of about £500 (which had been won in a football pool) by some unknown person at the café and that that person might also have committed the murder. The prosecution accordingly called two witnesses to show that L.'s story of how he came to be in possession of £500 was untrue, and the evidence of those witnesses showed that L. had stolen a football pool certificate. Objection was taken to the admission of that evidence on the ground that it was irrelevant and prejudicial, but the trial judge in his discretion admitted it. On appeal to the Court of Criminal Appeal, it was submitted on behalf of L., *inter alia,* that the trial judge was wrong in admitting the evidence in question.

Held, dismissing the appeal, that the evidence was relevant and, applying *Makin* v. *Attorney-General for New South Wales* [1894] A.C. 57 at 65, that the fact that it was prejudicial did not make it inadmissible. [H. P.]

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[2] For the appellant: *F. Ashe Lincoln Q.C., R. D. L. Du Cann* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *Melford Stevenson Q.C., J. Rogers* (instructed by the Director of Public Prosecutions).

COMMENTARY. The principle in *Makin* v. *Attorney-General for New South Wales,* above, was stated by Lord Herschell to be "The mere fact that evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears on the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused." On the question of prejudice Bray J. said in *R.* v. *Bond* [1906] 2 K.B. 389, ". . . bearing in mind the strong prejudice that would necessarily be created in the minds of the jury by evidence of this class, which shows that the prisoner has been guilty on another occasion of a similar offence, the greatest care ought to be taken to reject such evidence, unless it is plainly necessary to prove something which is really in issue." The test to be applied in considering prejudicial matter is whether its prejudicial effect is out of all proportion to its evidential value: see *Harris* v. *D. P. P.* [1952] A.C. 694.

See further, Archbold, 33rd ed., 369.

Evidence—*Deposition by person since deceased*

R. *v.* ABBATTO AND HEALEY [3] (Hertford Assizes: Byrne J.: May 13, 1955).

The accused were originally charged with assaulting H. with intent to rob him and with causing him grievous bodily harm. They were committed for trial on these charges after the court had adjourned to the hospital in which the injured man was being treated to take a deposition from him; the accused's solicitor was given full opportunity to cross-examine him. A few hours after the committal H. died. The accused were then charged with murder. When they appeared before the examining justices the justices' clerk gave evidence that he had been present at the hospital when H. made his deposition on the earlier charges and he produced the signed deposition. The justices, overruling the defendants' objection, admitted the deceased's deposition as an exhibit to the justices' clerk's evidence. The accused were committed for trial. The depositions were bound together and signed and certified at the end by the justices; H.'s exhibited deposition was not separately signed by a justice. At the trial counsel for the defence moved to quash the indictment on the ground that the justices had improperly admitted the deceased's deposition.

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[3] For the prosecution: *Derek Curtis Bennett Q.C., Basil Wigoder* (instructed by the Director of Public Prosecutions). For the defendant Abbatto: *J. P. Eddy Q.C., A. G. de Montmorency* (instructed by Hurd & Son, Hertford). For the defendant Healey: *F. D. L. McIntyre Q.C., T. J. F. Hobley* (instructed by Chalmers-Hunt & Bailey, Ware).

Held, that the justices had complied with section 4 of the Magistrates' Courts Act, 1952, and rule 5 of the Magistrates' Courts Rules. The deposition was admitted as an exhibit only and was proved by the justices' clerk who gave evidence.

Later in the trial, counsel for the defence submitted that the deceased's deposition was inadmissible since it did not comply with section 13 (3) of the Criminal Justice Act, 1925, and contended that to be admissible the deposition must be one taken during the current committal proceedings and must be signed itself by the committing justices. The prosecution conceded that the deposition would only be admissible under section 13 (3).

Held, the deposition was admissible. It came precisely within the meaning of section 13 (3) provided the statutory procedural conditions were satisfied. The defendants had had a full opportunity of cross-examining H. when he made his deposition. There was a sufficient signature of the deposition where all the depositions were bound together, as in the present case, and signed and certified at the end.

The first defendant was found guilty of manslaughter and the second defendant was acquitted.

[A. G. de Montmorency, *Barrister-at-Law.*]

COMMENTARY. The admission of the deposition follows cases where the depositions were taken on a charge of robbery which afterwards became murder (*R.* v. *Lee* (1864) 4 F. & F. 63), and on a charge of wounding which afterwards became murder (*R.* v. *Beeston* (1854) 18 J.P. 728).

As regards the signing of the deposition, section 13 (3) (*c*) merely states: " The deposition must purport to be signed by the justice before whom it purports to have been taken."

Forgery—*Insufficiency of evidence—withdrawal of case from jury —trial—no case to answer*

R. *v.* ABBOTT [4] (Court of Criminal Appeal: Lord Goddard C.J., Finnemore and Devlin JJ.: July 12, 1955) ([1955] 3 W.L.R. 369; [1955] 2 All E.R. 899).

A. was convicted, with a Mrs. W., at Manchester Assizes of forging a receipt for £2,415 in respect of the surrender of an insurance policy, and sentenced to two years' imprisonment. The facts were that some years ago A. had taken out an insurance policy on the life of his wife. A. paid the premiums and the policy became the property of his wife. In 1954 A. and his wife separated, and the case for the prosecution was that A. and his secretary, Mrs. W., arranged for the surrender of the policy by pretending that Mrs. W. was A.'s wife. The case for the prosecution rested on the evidence of the branch manager of the insurance company, who said that he had a telephone conversation with somebody, as a result of which £2,000 in cash was paid over at A.'s house to Mrs. W., who gave a receipt in the name of A.'s wife. A. appealed to the Court of Criminal Appeal against his conviction on the ground, *inter alia*, that there was in fact no case to answer and that the case ought to have been withdrawn from the jury at the end of the case for the prosecution.

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[4] For the appellant: *A. P. Marshall Q.C., F. G. Paterson* (instructed by Bieber & Bieber). For the Crown: *Sir Godfrey Russell Vick Q.C., C. T. B. Leigh, Michael Scholfield* (instructed by Cyril C. Harrison, Manchester).

Held, allowing the appeal, that the telephone conversation with the branch manager of the insurance company was such that, had the prosecution been able to show that it was A. speaking, there would have been no doubt that A. was a party to the fraud. Since, however, there was no other evidence connecting A. with the fraud, the judge ought not to have left the case to the jury. *R.* v. *Power* [1919] 1 K.B. 572 did not decide that if there was no evidence against a man who was indicted together with another person it was right to allow the case to go to the jury against that man, or that, if there was no evidence against him, it was other than a wrong decision in law. Although it was a misfortune that a guilty person could not be brought to justice, it was more important that there should be no miscarriage of justice. If there was no evidence against an accused man he was entitled to be acquitted. The fact that Mrs. W. had given evidence against A. after the case had gone to the jury did not prevent the Court of Criminal Appeal from quashing the conviction although such evidence might be taken into account by the court; *R.* v. *Power* did not decide that such evidence must be considered. [H. P.]

COMMENTARY. The decision in *R.* v. *Power* followed *R.* v. *Fraser* (1911) 7 Cr.App.R. 99, where Lord Alverstone C.J. said: "Where an objection is taken by counsel unsuccessfully, and he then calls evidence, this court is not bound to disregard the effect of that evidence." The suggestion that the Court of Criminal Appeal must consider evidence given after counsel's unsuccessful objection is not to be found either in *R.* v. *Power*, nor in *R.* v. *Fraser*, though in *R.* v. *George* (1908) 1 Cr. App.R. 168, a case not considered by the court, it was said that the court "is bound to look at it as it turned out as a whole." But despite this case it is unlikely that the Court of Criminal Appeal would wish to bind itself in this way.

Housebreaking—*Possession of housebreaking implements—passenger in car where implements found*

R. *v*. Lester and Byast [5] (Court of Criminal Appeal: Hallett, Pearce and Havers JJ.: August 16, 1955).

L. and B. were convicted at Middlesex Sessions of being found by night having in their possession implements of housebreaking, and were sentenced to two years' imprisonment. Most of the implements were found in the boot of a car owned and driven by B., but some others were found on B.'s person. L. was a passenger in the car. Both L. and B. were seen by the police in the act of stealing petrol from another car, but there was no evidence that they were engaged on any joint enterprise in which the housebreaking implements would be used. On appeal to the Court of Criminal Appeal:—

Held, that the appeal of B. must be dismissed, but that the appeal of L. would be allowed and his conviction quashed on the ground that the mere fact that he was a passenger in the car was not sufficient to prove that he was in possession of housebreaking implements. [H. P.]

Commentary. There appears to be no authority on the meaning of " possession " in the appropriate section, Larceny Act, 1916, s. 28, but a definition relating to criminal law and offences against property has been given in Stephen's *Digest,* 9th ed., 304, as follows: " A movable thing is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may be presumed to intend to do so in case of need." Where several persons are acting in pursuance of a common purpose to break into houses and one is in possession of housebreaking implements, all may be convicted of possessing them: *R.* v. *Thompson* (1869) 11 Cox C.C. 362. Clearly in this case the first element in *R.* v. *Thompson,* pursuance of a common purpose to break into houses, was absent.

Husband and Wife—*Letters between—privilege.* See R. *v*. Trott, p. 643 above.

Local Government—*Member of council—pecuniary interest*

Lawrence *v*. Everett [6] (West Kent Appeal Committee: G. A. Thesiger, Esq., Q.C., Chairman: July 15, 1955).

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[5] For the appellant: *L. J. Verney* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *J. H. Buzzard* (instructed by the Solicitor, Metropolitan Police.).

[6] For the appellant: *R. E. Seaton* (instructed by Wood, McLellan & Williams, Chatham). For the respondent: *F. H. Lawton* (instructed by the Director of Public Prosecutions).

L., a member of a borough council, was convicted in the magistrates' court under the Local Government Act, 1933, s. 76, of having unlawfully voted on a certain matter in which he had an indirect pecuniary interest. L. was a director and shareholder of a building society which, in common with a number of other building societies, had been approached by the borough council to ascertain whether it would take part in a scheme under which the local authority would guarantee excess advances made by building societies for house purchase. The local authority had asked the building society to answer certain questions which disclosed that the local authority desired to depart somewhat from the terms of the model scheme, and the building society had indicated that it did not desire to depart from the model scheme. In January, 1955, after the matter had received preliminary consideration, the town clerk wrote to the Minister of Housing and Local Government asking him to remove the disability imposed on certain members of the authority who were either directors of the building society or who held shares in building societies when the council's policy in the matter was to be under discussion. The Minister removed the disability which was thought to affect L. so as to enable him to discuss the matter but not to vote. In February, after the receipt of the Minister's reply, the local authority considered a recommendation of its housing committee that a scheme for the guaranteeing of advances to building societies be adopted. At the meeting an amendment was moved that the word " not " should be inserted in the recommendation before the word " adopted." When the amendment was put to the meeting L. voted against the amendment, which caused an equality of votes, and the mayor thereupon gave his casting vote against the amendment and in favour of the proposition, which was accordingly carried. At the magistrates' court, after being convicted, L. was ordered to pay a fine of £50. L. appealed against his conviction and there were two issues before the Appeal Committee. The first was as to whether, in the circumstances and having regard to the provisions of section 76 (2), the building society was a body which had a direct pecuniary interest in the matter under consideration. The second was as to whether the proviso to subsection (1) of section 76, which provides that the section shall not apply to an interest in a matter which a member may have as a ratepayer or inhabitant of the area, applied so as to exempt L. from his disability as a member of the borough council. The cases of *England* v. *Inglis* [1920] 2 K.B. 636, *Lapish* v. *Braithwaite* [1926] A.C. 275, and *Wilson* v. *London, Midland and Scottish Ry.* [1940] Ch. 169 were referred to.

Held, allowing the appeal and quashing the conviction, that, at the time L.'s vote was recorded the matter had not reached the stage when it could be said that the building society had a direct (as opposed to an indirect) pecuniary interest in the matter under consideration. The proviso to section 76 (1) did not apply to L.

COMMENTARY. The Local Government Act, 1933, s. 76, makes it an offence for a member of a local authority to take part in discussion of or vote on any question in which he has any pecuniary interest direct or indirect. Under subsection (2) a person is treated as having indirectly a pecuniary interest in a matter if "(*a*) he . . . is a member of a company or other body . . . which has a direct pecuniary interest in the . . . matter under consideration, or (*b*) he is . . . in the employment of a person . . . who has a direct pecuniary interest in the . . . matter under consideration." The question, therefore, was whether the building society of which L. was a director and in which he held shares, had a direct pecuniary interest in the matter upon which he voted. This was obviously a case which came somewhere near the borderline. By voting, L. had indeed made it possible for the building society to be able ultimately to take part in a scheme, but as no definite scheme was in existence at the time he voted, the Committee decided that the society had at that time no direct pecuniary interest.

Local Government—*Member of council—pecuniary interest*

DIRECTOR OF PUBLIC PROSECUTIONS *v.* GIBBS AND OTHERS [7] (Northampton Magistrates' Court: E. H. Shaw, Esq., Chairman: July 25, 1955).

The defendants, five councillors and one former councillor, were charged with voting at a meeting of the Northampton Borough Council in a matter in which they had a pecuniary interest, contrary to section 76 of the Local Government Act, 1933. The defendants were all tenants of council houses and flats, and three had lodgers. The housing committee recommended that the lodgers' levy imposed on council house tenants should be abolished. The recommendation was opposed and a further resolution was introduced that the lodgers' levy should be abolished except in cases that related to councillor tenants. An amendment was moved to delete this exception. All the defendants voted against the amendment, which was defeated. Before the vote was taken on the amendment the town clerk gave his opinion that the defendants had an interest in the matter being debated and that they should declare that interest and neither speak nor vote. They then all declared their interest.

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[7] For the prosecution: *Paul Wrightson* (instructed by the Director of Public Prosecutions). For the defendants: *Sir Hartley Shawcross Q.C., Miss J. Graham Hall* (instructed by Max Engel & Co., Northampton).

Held, the defendants were guilty and they were each fined £2.

COMMENTARY. The provisions of section 76 are referred to in the commentary to *Lawrence* v. *Everett*, above.

Magistrates' Courts—*Deposition of person since deceased.* See R. *v.* ABBATTO AND HEALEY, p. 645, above.

Magistrates' Courts—*Jurisdiction—change of plea after committal to quarter sessions for sentence.*

R. *v.* MURPHY [8] (East Suffolk Quarter Sessions Appeals Committee: Sir Cecil Oakes, Deputy Chairman: June 27, 1955).

For a consideration of this case, see p. 636, above.

Murder—*Evidence—evidence of another offence.* See R. *v.* LUMELINO, p. 644, above.

Quarter Sessions—*Committal for sentence—change of plea.* See R. *v.* MURPHY, p. 636, above.

Receiving—*Intermediary in sale of stolen bicycle*

POLICE *v.* REILLY (Thames Magistrates' Court: Lt.-Col. W. Elliott Batt, Metropolitan Magistrate) (19 *Journal of Criminal Law* 215).

The defendant was charged with receiving a bicycle and consented to summary trial. He traded at a stall in a street market in a number of goods, including clocks, radio sets and old clothes. A man offered to sell him a bicycle. The defendant refused, but allowed the man to leave the bicycle against his stall with a price tab on it in the hope of finding a purchaser. The man had in fact stolen the bicycle. Another person offered to buy the machine and the defendant acted as an intermediary in the sale between the purchaser and the thief, retaining part of the purchase price as a commission. The purchaser knew that the defendant was acting as intermediary and that the bicycle did not belong to him.

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[8] For the prosecution: *W. H. Hughes* (instructed by the Town Clerk, Lowestoft). For the defence: *J. T. Turner* (instructed by Holt & Taylor, Lowestoft).

Held, the defendant was not guilty of receiving, and he was discharged.

COMMENTARY. A conviction for receiving cannot be sustained if the exclusive possession of the article remains in the thief: *R.* v. *Wiley*, (1850) 2 Den. 37. In other receiving cases, where a doubt on this point has arisen, the stolen property was usually found on the premises of the alleged receiver, but in this case the evidence concerning possession seemed to favour the defendant. See further, Archbold, 33rd ed., 783–4.

Road Traffic—*Drunk in charge of a vehicle—vehicle being driven by another person*

POLICE *v.* JEWERS[9] (Feltham Magistrates' Court: V. R. M. Gattie, Esq., C.B.E.. Chairman: August 15, 1955).

The defendant was charged with being in charge of an 8-ton articulated motor-vehicle whilst under the influence of drink to such an extent as to be incapable of having proper control of the vehicle. Evidence for the prosecution was given by the mate of the driver charged. This witness said that he was licensed only to drive motor-cycles and had only driven a motor-car a couple of times. On the day in question they left Ilminster in Devon early and did not stop until they reached an inn on the London side of Salisbury, where they had several drinks. About two hours later they continued their journey with the defendant still driving, but after two or three miles the witness noticed the vehicle weaving about the road and asked the defendant to stop. As the defendant looked ill the witness suggested it might be better if he took over. He could not say whether the defendant understood, but he changed places with him and drove the vehicle until it collided with a motor-cycle in Staines. The defendant fell asleep during the journey and when the police found him he was slumped in the passenger's seat in a drunken condition. The defendant, when roused, admitted he was the authorised driver and that he was in charge of the vehicle. A doctor who examined the defendant testified as to his incapacity to drive through drink. The defendant's advocate called no evidence and submitted there was no case to answer on the ground that the defendant was not in charge of the vehicle at the material times.

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[9] For the prosecution: *J. C. Phipps* (instructed by the Solicitor, Metropolitan Police). For the defendant: *S. E. Brodie* (instructed by W. C. R. West, Southall).

He cited *Crichton* v. *Burrell,* 1951 S.C. 107, *R.* v. *Kitson* [1955] Crim.L.R. 436, *Dean* v. *Richard* (1954) unreported, and *Winter* v. *Morrison,* 1954 S.C.(J.) 7. The prosecution cited *Clark* v. *Clark,* 1950 S.L.T.(Sh.Ct.) 68, and also submitted that the words "in charge" should not be restricted solely to the act of driving.

Held, the defendant was guilty. He was fined £10 and ordered to pay £10 10s. costs. The chairman stated that the court found special reasons for not disqualifying the defendant.

[Frank M. Bevan, *Clerk to the Justices.*]

COMMENTARY. The test of whether a person is "in charge" of a vehicle was laid down in *Haines* v. *Roberts* [1953] 1 W.L.R. 309, *i.e.,* has he given it in charge of someone else. Whilst here, the defendant's mate had taken charge of the vehicle he was not a person qualified to drive and the case of *Clark* v. *Clark,* above, would appear to be in point; in that case a man supervising a learner-driver was drunk, and was held to be in charge of the vehicle.

Sentence—*Preventive detention—public safety*

R. *v.* GARDINER[10] (Court of Criminal Appeal: Hallett, Pearce and Havers JJ.: August 16, 1955).

G. pleaded guilty before justices to larceny as a servant and simple larceny, and, being committed to quarter sessions for sentence, was sentenced to seven years' preventive detention. G. was 31 years of age and had worked honestly for four and a half years before he began to commit a series of offences, including the stealing of motor-cars, embezzlements, obtaining money by false pretences and obtaining credit by fraud, and at the time of being sentenced he asked for 32 other offences to be taken into consideration. He had never previously been given any training such as Borstal or corrective training.

Held, that since in all the circumstances it appeared that preventive detention might not at that stage be required for public safety, the sentence of preventive detention would be quashed and a sentence of five years' imprisonment substituted, together with a supervision order under section 22 of the Criminal Justice Act, 1948. [H. P.]

Trial—*Withdrawal of case from jury—insufficiency of evidence.* See R. *v.* ABBOTT, p. 646, above.

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[10] The appellant appeared in person. The Crown was not represented.

Acts and Orders

Animals

Animals (Landing from Channel Islands, Isle of Man, Northern Ireland and Republic of Ireland) Order, 1955 (S.I. No. 1310): operative September 1, 1955. The Orders of 1933 (S.R. & O., 1933, Nos. 20, 410) are revoked and replaced, with certain amendments. The principal changes are (1) swine imported from Northern Ireland and the Republic of Ireland, which are not intended for immediate slaughter, no longer require special declarations in addition to a veterinary certificate; (2) all sheep, except those imported from the Isle of Man which have had no contact with sheep from elsewhere and sheep proceeding direct to a slaughterhouse, must be immersed in an approved " single-dipping " type sheep dip before being moved from a landing place; sheep being taken direct to a slaughterhouse must be slaughtered within six days of arrival there. The movement of imported cattle is now regulated by the Second Schedule to the Diseases of Animals Act, 1950, and consequently references to cattle are omitted from the new Order.

For penalties for contraventions, see sections 78, 79 and 82 of the Act of 1950.

Imported Livestock (Marking) (Amendment) Order, 1955 (S.I. No. 1223): operative August 8, 1955. The Order of 1954 (S.I. No. 760) is amended and a new alternative marking provided for pigs.

Birds

Wild Birds (Sundays) Order, 1955 (S.I. No. 1286): operative September 1, 1955. It is an offence to kill or take any wild bird included in the Third Schedule to the Protection of Birds Act, 1954, on Sundays, or to attempt to do so, in the administrative counties of Caernarvon, Carmarthen, Devon, Isle of Ely, Montgomery, Norfolk, Pembroke, and the North and West Ridings of York, and in the county boroughs of Doncaster, Great Yarmouth and Leeds.

For penalties for contraventions, see section 12 (2) (*b*) of the Act of 1954.

Customs and Excise

Tourist Publicity Materials (Temporary Importation) Regulations, 1955 (S.I. No. 1346): operative September 26, 1955. Specified publicity materials sent to the United Kingdom by an official national tourist agency or by a national tourist agency affiliated therewith, imported for the purpose of encouraging travel and intended to be re-exported are, subject to certain conditions, freed from duty.

Emergency Laws

CONTROL OF PAPER (NEWSPAPERS) (ECONOMY) (AMENDMENT No. 3) ORDER, 1955 (S.I. No. 1279): operative August 21, 1955. The number of pages which a newspaper may print during the period August 21, 1955, to March 3, 1958, is prescribed and is an increase on the previous number.

STRATEGIC GOODS (CONTROL) (AMENDMENT) ORDER, 1955 (S.I. No. 1280): operative August 26, 1955. The Order of 1954 (S.I. No. 1622; [1955] Crim.L.R. 123) now applies to North Viet Nam and certain specified turbines, cable-making machines, cables, line communications transmission equipment, and aircraft refuelling apparatus and appliances are included among the goods affected by the Order. The Order no longer applies to certain dielectric driers, electrical machinery and microflash apparatus.

International Law

INTERNATIONAL ORGANISATIONS (IMMUNITIES AND PRIVILEGES) ORDERS, 1955; INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANISATION (S.I. No. 1207); COMMISSION FOR TECHNICAL CO-OPERATION IN AFRICA SOUTH OF THE SAHARA (S.I. No. 1208); WESTERN EUROPEAN UNION (S.I. No. 1209): all operative on dates to be notified in the *London Gazette*. The Inter-Governmental Maritime Consultative Organisation and the Western European Union are given the legal capacity of bodies corporate and accorded diplomatic immunity. The Commission for Technical Co-operation in Africa South of the Sahara is given the legal capacity of a body corporate.

London

See ROAD VEHICLES LIGHTING (STANDING VEHICLES) (EXEMPTION) (LONDON) REGULATIONS, p. 656, below.

Merchant Shipping

MERCHANT SHIPPING MEDICAL SCALES (AMENDMENT) ORDER, 1955 (S.I. No. 1157): operative November 1, 1955. The scales of medicines and medical stores contained in the Schedule to the Order of 1953 (S.I. No. 998) are further amended. The Order does not apply to certain ships on a voyage out of the United Kingdom or the Republic of Ireland when the Order comes into operation until their return.

For penalties for offences, see section 200 of the Merchant Shipping Act, 1894.

Police

RATING AND VALUATION (MISCELLANEOUS PROVISIONS) ACT, 1955 (4 Eliz. 2, c. 9): operative July 27, 1955. The police authority for any area has, and is deemed always to have had, the power to incur expenses in making contributions in aid of rates in respect of hereditaments which are occupied for the purposes of their force, whether in the police area or elsewhere, and for which no rates are paid. Expenses so incurred are to be treated as expenses incurred for the purposes of the police force for that area (section 10).

Road Traffic

ROAD VEHICLES LIGHTING (STANDING VEHICLES) (EXEMPTION) (LONDON) REGULATIONS, 1955 (S.I. No. 1363): operative September 21, 1955. Subject to prescribed conditions certain vehicles are exempt from showing the front and rear lights required to be shown at night by the Road Transport Lighting Acts, 1927 to 1953, when they are parked on roads in the Metropolitan Police District or the City of London. The vehicles to which the regulations apply are passenger vehicles adapted to carry not more than seven passengers, goods vehicles the unladen weight of which does not exceed two tons, invalid carriages and motor-cycles and pedal cycles, whether they have a sidecar attached or not; no vehicle, however, is exempted if it is one to which section 7 of the Road Transport Lighting Act, 1927, applies (lighting of vehicles with overhanging or projecting loads) or if a trailer is attached to it (regulation 3). When parked on a road on which a speed limit of 30 m.p.h. or less is in force and on which no bus or trolley-bus service is run a vehicle is exempted from lighting requirements if (1) the left or near side of the vehicle is as close as may be and is parallel to the edge of the carriageway; (2) no part of the vehicle is more than 25 yards from a street lamp; (3) the street lamp is illuminated throughout the time during which the vehicle is standing parked (no account being taken of any time during which the lamp is accidentally extinguished); and (4) no part of the vehicle is within 15 yards from any junction. In the case of one-way streets either the left or near side or the right or off side of the vehicle must be as close as may be and parallel to the left or right hand edge of the carriageway. This regulation does not apply to any part of a road specially set aside for the parking of vehicles or as a stand for hackney carriages (regulation 4). Vehicles which are lawfully permitted to stand or be parked in any parking place or stand for hackney carriages are exempted from showing the required lights if the written consent of the Commissioner for Police in whose area the road is situated has been given. Regulation 28 of the Road Vehicles Lighting Regulations, 1954 (S.I. No. 1105; [1954] Crim.L.R. 805) ceases to apply to any road to which these Regulations apply (regulation 5). Without prejudice to the foregoing provisions a vehicle is exempted from lighting requirements if standing or parked on any road on which a speed limit of 30 m.p.h. or less is in force if (1) the left or near side of the vehicle is as close as may be and is parallel to the edge of the carriageway; (2) no part of the vehicle is more than 100 yards from a street lamp, whether illuminated or not; (3) no part of the vehicle is within 15 yards from a junction; and (4) the vehicle shows to the front a white light and to the rear a red light (regulation 6). Regulations 7 and 8 prescribe the manner of display and the character and position of parking lights; they must be fixed to the off side of the vehicle and no part of the vehicle or its equipment should extend laterally on the off side more than 12 inches from the centre of either illuminated area of the lamp; both lights must be clearly visible to an observer at any point on an arc extending 90 degrees from the longitudinal axis of the vehicle to the off side.

For penalties for contraventions, see section 10 of the Road Transport Lighting Act, 1927.

Scotland

Prisons

DISCONTINUANCE OF PRISONS (GLASGOW) ORDER, 1955 (S.I. No. 1161): operative August 18, 1955. The prison of Glasgow is discontinued.

Letters to the Editor

Food and Drugs—A misleading advertisement

Sir,

In *Sears* v. *A. J. Lytle (Advertising)* [1955] Crim.L.R. 503, unless there is some other unobvious explanation, an astonishing and probably unique blunder has been made by the defendants, prosecutor, analyst and court, for without this blunder it is difficult to see how any of them could have acted as they did.

It will be remembered that the defendants were fined £10 for inaccurately advertising that their grapefruit was " rich in protective vitamin A that wards off colds, etc." Grapefruit itself, of course, contains practically no vitamin A, but it does contain a great deal of vitamin C, and vitamin C is claimed by many authorities to ward off colds when taken in massive dosage, *i.e.*, up to 1 gm. daily ; see the advertisement of Redoxon, which has never been challenged.

It is obvious that the whole matter must have originated in a mere clerical error of printing A for C. One cannot understand defendants pleading (or being held) guilty, an analyst certifying without explanation, a prosecutor prosecuting, or a court punishing, if any one of these had realised the simplicity of the mistake, as simple as A B C!

This was pointed out to me by a pharmaceutical chemist with whom I discussed the matter.

Yours faithfully,

F. J. O. Coddington.

Bradford.

Books and Periodicals

Reviews:

The Home-Menders. The Prevention of Unhappiness in Children. By Basil Henriques, C.B.E., M.A., J.P. London: George G. Harrap & Co., Ltd. 1955. 192 pp. (10s. 6d. net.)

No one who has worked in the field of juvenile delinquency could fail to agree with Mr. Henriques that the home is the key-pin of a child's life. Any lack therein rebounds disastrously upon the child.

Realising that prevention is the weakest side of child welfare work in England, Mr. Henriques makes a reasoned plea that responsibility for child welfare should be concentrated in one government department. Among other worthwhile observations, he points out that the early clue of truancy, which almost inevitably leads to delinquency, is insufficiently followed up.

Much wisdom lies within this book. A series of reminiscences and reiterated views of one so devoted to child welfare is always worth reading. Its failure to rise above mediocrity is due solely to the fact that so much of the contents have been said more succinctly before—by Mr. Henriques, and others.

JEAN GRAHAM HALL.

Police Drugs. By Jean Rolin. London: Hollis & Carter. 1955. 190 and (bibliography) 4 pp. (12s. 6d. net.)

Only recently have the criminal courts of this country been made aware of the potentialities of using narcotic drugs to induce statements from the accused (see [1954] Crim.L.R. 423–434, 482). So far such evidence has been put forward always at the behest of the defence, but in other countries, like France and the U.S.A. the prosecution have been known to include as an essential part of their case statements made by a prisoner when under the influence of one of the barbiturate group of drugs, the best known, perhaps, being sodium pentothal. These drugs, of course, are used in everyday psychiatric practice when diagnosing and treating certain psychotic mental states, and their use in the medical field is generally approved. But what of the problem which arises when it is sought to use the same methods, not with a desire to help the patient, but in order to bring to light matters which the accused deliberately wishes to conceal? Should our law countenance the giving of evidence obtained not as the result of direct physical violence or torture, or as the result of such methods as prolonged interrogation or fatigue from bright lights, but by the forceful penetration of a mind, voluntary control over which is abrogated by the use of drugs?

It is with this vital question that Monsieur Rolin has grappled in a manner which displays an almost passionate belief in the injustice of using narcotic drugs to obtain confessions. His opposition to the use of narco-analysis as a recognised form of police methods of investigation stems mainly from principles of morality. Equally convincing is his exposure of the scientific weaknesses inherent in the interrogation of an accused while in a state of anaesthesia—whether induced by pentothal or any other narcotic drug. Whatever pretentious claims are advanced by some psychiatrists for pentothal, Monsieur Rolin has shown in this book that there is a substantial body of research material indicating that a patient under the influence of a narcotic drug may, under questioning, give answers which have little in common with factual reality. The subject may sometimes be refractory and continue to watch what he is saying. Other patients have been known to be over-suggestible to questions asked by the interrogator. In short, at the present stage of research into narco-analysis, statements made by a prisoner under the influence of a narcotic drug must be treated with infinite caution. The achievement of this lesson alone justifies the publication in this country of Monsieur Rolin's stimulating book.

J. LL. J. EDWARDS.

An Introduction to Naval Court-Martial Procedure. Fifth edition by Captain A. D. Duckworth and Commander R. R. S. Fisher, D.S.C. Devonport: Hiorns & Miller, Ltd. 1955. 110 pp. (no index). (15s. net.)

For the fifth edition Captain Duckworth has been assisted by Commander Fisher, and the result proclaims a happy and successful partnership. The authors make no claim for the book other than as a short introduction to naval court-martial procedure, and as such they have provided an informative and readable exposition which will be invaluable both to the student when he comes first to read the subject, and to the naval officer about to be thrust into the unfamiliar surrounds of a criminal tribunal, be it in the capacity of judge or advocate. Wisely in a work of this scope no attempt has been made to deal with substantive naval law, the authors confining themselves to jurisdiction, procedure and evidence.

There are two excellent chapters which give a short but comprehensive summary of the duties which fall upon the prosecutor and next friend respectively, and contain much useful advice demonstrated by well-chosen examples. Throughout the book full use has been made of tables and diagrams to illustrate the text.

The work loses some of its potential value by the absence of an index and, in particular, of footnotes. Footnotes, if carefully selected, would be most helpful for reference purposes, without in any way detracting from the principal features of the book as an introductory essay.

The objects have been achieved. The " Young Officer whose initial efforts to learn ' something about court-martial work for my exam. Sir ' recalled the authors' similar anxiety in the past," to whom the book is dedicated, should be duly grateful, as also should all persons who would wish the subject to be introduced to them in palatable yet scholarly form.

NORMAN C. TAPP.

Very Private Enterprise. An anatomy of fraud and high finance. By Aylmer Vallance. London: Thames & Hudson. 1955. v and 205 pp. (15s. net.)

My Testament. By Captain Peter Baker, M.C. London: John Calder (Publishers), Ltd. 1955. 288 pp. (15s. net.)

" An anatomy of fraud and high finance " is the subtitle which Mr. Vallance has chosen for this collection of cases, ranging in time from the South Sea Bubble to the trifling " Cotswold Cider " affair of 1953. The implied claim is altogether too high. For, as he himself is constrained to admit more than once, the bones which he has painstakingly disinterred from the records do not all belong to the same animal. The criminal activities of professional crooks like Stavisky, the perpetrators of the Portuguese bank-note swindle or " Stewart-Hargreaves " were of a totally different order to those of Lord Kylsant, Ivar Kreuger or the directors of Farrow's Bank. To attempt a synthesis between them was to court failure. Apart from the somewhat obvious conclusion that certain social and economic conditions provide an atmosphere favourable for the development of financial frauds, Mr. Vallance has little to offer by way of philosophic analysis.

The book would have been a more consistent whole if the author had confined himself to what was evidently his original subject—the study of financiers who " went wrong," either because, like Bottomley, they were incapable of going straight, or because, like Bevan, they tried by illegal methods to prop up a failing business when the market turned against them. Had he done so, he could have allowed himself more space in which to elaborate the portraits in his rogues' gallery. Characters like Whitaker Wright, Jabez Balfour and E. T. Hooley deserve more than a dozen pages apiece. Within the limits that he has imposed upon himself, however, he has dealt fairly with his sitters.

Considerable research must have gone to the making of the book, which necessarily involves the reproduction of complicated financial affairs. The reader may, however, justifiably question Mr. Vallance's accuracy when he is found stating categorically of Clarence Hatry that " ' forgery ' in the legal sense was not a crime committed by him," and suggesting that Avory J.—of all people!—was incorrect in saying that it was. Of the charges to which Hatry pleaded guilty, three were under section 2 (2) (*a*) of the Forgery Act, 1913, and twenty-two under section 6. And was it fair to deprive the late President Harding of almost his sole claim to immortality by editing " normalcy " to " normality "?

As Mr. Vallance points out, the cause of the downfall of many gamblers is that, once started, they never know where to stop. In extreme cases the *folie de vitesse* that affects them becomes almost pathological. Peter Baker's pathetic apologia is the record of such a case. " Although my main and most deeply felt interests had been literature and politics, I had found myself at the end, head of a group comprising a proprietary brand of whisky; a wine merchants and an investment trust; an aircraft research company and a property company, a television firm and a weekly magazine; one of the best known brands of rum and, of course, our printing and publishing companies. We had factories, works and offices in London and Lancashire, Farnham, Glasgow and Dundee. Like all my generation, I missed, through the war, seven years which might well have been devoted to business training. . . ." Just so.

CYRIL HARE.

The Blind Beak. By Ernest Dudley. London: Robert Hale, Ltd. 1954. 222 pp. (10s. 6d. net.)

This novel claims to be based on the figure of Sir John Fielding, the blind magistrate who founded the Bow Street Runners in the eighteenth century, but the chief character is a volatile young man from the St. Giles Rookeries who, after a period devoted to crime and debauchery as a kind of aide to Casanova when on a visit to London, is rescued by Fielding and persuaded to become one of his agents. Unfortunately the hero's police career is complicated by a passionate love affair with a young French aristocrat who has been misled into becoming a spy for Madame Du Barry. Owing to the resulting tension between love and duty the hero breaks his association with Fielding, has a bad relapse and plunges madly back into a life of dissipation for which there was more than ample scope in the London of the time. His wild behaviour nearly gets him hanged, but he escapes at the eleventh hour under cover of the Gordon Riots, of which there is a very racy account, and after an exhausting time with the mob finds an opportunity to redeem himself by rescuing Fielding from the rioters.

The book gives vivid, sometimes lurid, descriptions of eighteenth-century high life and low life, neither of which was noted for its virtue. The characters, as in so many historical novels, however, fail to be convincing. It would have been interesting to have heard more about the Bow Street Runners.

M. P.

The Man On Your Conscience. An Investigation of the Evans Murder Trial. By Michael Eddowes. London: Cassell & Co., Ltd. 1955. 280 pp. (12s. 6d. net.)

The author here sets out to show that Timothy Evans was not guilty of the murder of his daughter, Geraldine, in November, 1949, a crime for which he was found guilty and hanged, but that John Christie was guilty. In addition to the trial of Evans, readers will recall that the murders of Geraldine and Evans's wife, Beryl, were also investigated by Mr. Scott Henderson, Q.C., who came to the same conclusion as the jury at Evans's trial.

Against these two investigations of the facts Mr. Eddowes sets his own. Unfortunately his methods of inquiry appear less likely to arrive at the truth, whatever it may be, than the more customary processes. The book commences with a fictional reconstruction of the events which assumes that Christie was guilty of the crime; this contains such blemishes as a complete invention of a conversation supposed to have taken place when Christie showed Evans the dead body of Beryl Evans. The book would have been more convincing if this reconstruction had been placed after the detailed examination of the facts contained in subsequent chapters.

The correct answers to the questions posed by this unhappy affair may or may not have been given by the official investigations, but the methods adopted in this book did not convince the reviewer that Mr. Eddowes had found the answers either beyond a reasonable doubt nor so that he could feel satisfied.

P. H. B. A.

Books Received:

Dead Line for Crime. By Duncan Webb. London: Frederick Muller, Ltd. 1955. 237 pp. (12s. 6d. net.)

Group Problems in Crime and Punishment. And Other Studies in Criminology and Criminal Law. By Hermann Mannheim. London: Routledge and Kegan Paul, Ltd. 1955. x and 299 and (indices) 9 pp. (28s. net.)

Forensic Medicine. A textbook for Students and Practitioners. Tenth edition. By Sir Sydney Smith, C.B.E., LL.D., Emeritus Professor of Forensic Medicine, University of Edinburgh, and F. S. Fiddes, O.B.E., M.D., Senior Lecturer in Forensic Medicine, University of Edinburgh. London: J. & A. Churchill, Ltd. 1955. xi and 623 and (index) 21 pp. (40s. net.)

Current Legal Problems, 1955. Edited by George W. Keeton and Georg Schwarzenberger. London: Stevens & Sons, Ltd. 1955. vii and 235 and (tables and index) 12 pp. (32s. 6d.)

The Shadow. The Amazing Exploits of Frank Fahy. By Vince Kelly. London: Angus and Robertson. 1955. x and 204 pp. (12s. 6d. net.)

Mens Rea in Statutory Offences. By J. Ll. J. Edwards, M.A., LL.B., PH.D., Barrister-at-Law, Reader in Law in the Queen's University of Belfast. London: Macmillan & Co., Ltd. 1955. xiv and 258 and (tables, bibliography and index) 39 pp. (21s. net.)

"*Special Reasons.*" Third edition. By W. E. Blake Carn, Solicitor, Clerk to the Justices. London: Shaw & Sons, Ltd. 1955. 72 pp. (7s. net.)

Hue and Cry. The Birth of of the British Police. By Patrick Pringle. London: Museum Press, Ltd. 1955. 210 and (bibliography) 4 and (index) 16 pp. (15s. net.)

Prediction Methods in Relation to Borstal Training. By Dr. Hermann Mannheim, Reader in Criminology in the University of London, and Leslie T. Wilkins, of the Government Social Survey. London: H.M. Stationery Office. 1955. viii and 260 and (list of tables and indices) 16 pp. (17s. 6d. net.) See article at p. 604.

From Gun to Gavel. The court room recollections of James Mathers of Oklahoma, as told to Marshall Houts. London: Souvenir Press, Ltd. 1955. 230 pp. (15s. net.)

Articles:

International and Comparative Law Quarterly, Vol. 4.
  English and French legal methods: crime, p. 376.

Police College Magazine, Vol. 4.
  Police and social welfare, p. 7.
  Public meetings, p. 17.
  Criminal procedure in Italy, p. 24.
  Home and colonial (police forces), p. 54.
  Tort and the police, p. 67.

Journal of Forensic Medicine, Vol. 2, No. 3.
Foreign bodies in the lungs of the apparently drowned, p. 141.
Alcohol and crime, p. 164.

International Criminal Police Review, August–September, 1955.
Police youth clubs, p. 187.

Solicitors' Journal, Vol. 99.
Evidence of spouses in criminal cases, p. 551.
Recent road traffic cases, p. 591.

Law Journal, Vol. 115.
Disclosure of interest by councillors, p. 532.

Police Review, Vol. 63.
The investigation of road accidents, p. 576.
County police communications, p. 608.

Police Chronicle.
Science and the young policeman, August 26, 1955, p. 3; September 2, 1955, p. 5.

THE
CRIMINAL LAW
REVIEW

Editors

JOHN BURKE and PETER ALLSOP, M.A.

Barristers-at-Law

Editorial

Committals to quarter sessions

The difficulties caused by the transfer of the burden of dealing with the large number of criminal cases from assizes to quarter sessions have been pointed out to us by a correspondent who writes:

" A question which in practice has often to be decided by magistrates' courts is whether a case should be committed to assizes or quarter sessions. The Magistrates' Courts Act, 1952, makes it clear that the magistrates' duty in the matter is to commit all cases triable at quarter sessions to quarter sessions unless there are circumstances which make the case unusually grave or difficult or unless serious delay would be caused, when they are entitled to commit the case to assizes. This duty has been emphasised by a recent direction of the Lord Chief Justice (see [1954] Crim.L.R. 291). In consequence, far fewer cases have during the past eighteen months been committed for trial at assizes and the business of quarter sessions throughout the country has increased substantially, with the result that magistrates who sit at quarter sessions have had to devote a greater part of their time than before to this work. Where long cases have had to be tried administrative difficulties have arisen from time to time, as in many county towns there is only one court building available for the sittings of petty sessions, for county court work, and for the hearing of divorce causes by a commissioner. A case in which there were at least eighty witnesses and nearly two thousand exhibits was committed recently to Warwickshire Quarter Sessions. Sir Donald Finnemore (Chairman) directed that it be tried at the forthcoming Warwickshire Assizes, and his observations may be of interest to those who have to consider what course should be taken in this type of case:

> " 'It is not possible for these quarter sessions to try this case now, because we have not the court available, or the chairman available, or the time available.
>
> " 'I think I might say this. I think I am speaking strictly within the direction of the Lord Chief Justice which went round to the courts of the country when I say that, while there are some cases which could technically be tried at quarter sessions, they are obviously assize cases: and I think it is quite right that the justices' clerks should consider the complexity of a case, the seriousness of a case, and especially the length of a case and, when they have a case which in their considered opinion is an assize case and one which would be extremely difficult or even impossible to try reasonably at quarter sessions, they would be justified and acting quite strictly within the discharge of their duty in committing it direct to assizes, because that then saves expense and delay such as has to happen in this case.' "

French methods

A scrap-metal merchant of Toulon is the first person to be penalised under a French statute of 1952 designed to stop tax evasion. As his punishment, M. Pappa has been forbidden to exercise his profession or to drive a car. The former prohibition he does not mind, since he is now employed by his son, but the latter is more trying as one of his present duties is that of chauffeur.

A novel way of dealing with cars breaking parking regulations is being tried in Paris. Where such cars are found by the police, a breakdown lorry is called by a police patrol-car radio and the offending vehicle is hauled away. The owner is informed at the nearest police station where the car—and the summons—are waiting.

The Magistrates' Association

The Magistrates' Association, which held its Annual General Meeting in London on October 20 and 21, has published its Annual Report for 1954–1955.

During the year the Association submitted evidence to the departmental committees on the summary trial of minor offences and on homosexual offences and prostitution; this evidence is contained in two appendices to the Report.

The Council of the Association suggests that fresh inquiry should be made into the treatment of young people appearing before juvenile courts. The last committee on the subject reported in 1927, and since then there has been considerable development in the work of juvenile courts and in the methods of dealing with juvenile offenders. The Council has approached the Home Secretary and he has agreed to receive a deputation to discuss the matter.

The Report deals with a number of other points, including the administration of oaths in juvenile courts, presenting the prosecution's case in magistrates' courts, music, singing and dancing licences, and the disqualification from driving of juveniles already disqualified by age.

Prison officers

The recent claim of prison officers for an increase in their basic wages has drawn attention to the shortage of such officers and the difficulty of recruiting suitable persons. The General Secretary of the Prison Officers' Association has said that the service is at least 6 per cent. below the numbers it should have for current requirements. It is agreed by most people that a three-shift system for prisoners' work, which would mean a longer working day for prisoners, should be introduced in all prisons, but until there is a substantial increase in the number of prison officers this will be impossible. The system has been introduced at Parkhurst and Dartmoor; at the former representations have been made about the inadequate staff, and at the latter the system is only maintained because of the inordinate amount of overtime worked.

New open prison

A former army camp at Ashwell in Rutland has been taken over by the Prison Commissioners and is being adapted as an open prison for about 250 persons. It is intended as a permanent prison and will replace two temporary camps in the north of England. The prison should be completed by autumn next year.

Judicial appointment

Mr. Justice Devlin has been appointed Chairman of the Wiltshire Quarter Sessions in place of Lord Oaksey, who is retiring.

The Power to Prosecute

By Glanville Williams, LL.D., *Barrister-at-Law*

(*Continued from p.* 604)

Legal requirements of official action

Exceptionally, there is quite a list of crimes that by statute cannot be prosecuted except by or with the leave of some official, such as the Director of Public Prosecutions, one of the Law Officers of the Crown, the Home Secretary or other Minister, or the police. Most of these statutes are referred to in Archbold (33rd ed.), pp. 109–10 (para. 195), Halsbury's *Statutes* (2nd ed.), vol. 14, pp. 1026–8, and Halsbury's *Laws of England* (3rd ed.), vol. 10, p. 338. In one case the order of a judge is necessary, namely for the prosecution of a newspaper proprietor, editor, etc., for libel (Law of Libel Amendment Act, 1888, s. 8). Sometimes the consent of an official is required for a prosecution only where the prosecution is not undertaken by the person aggrieved: an example is the Public Health Act, 1936, s. 298.

These statutory provisions, haphazard and piecemeal as they are, seem to indicate that, without committing itself to any general rule, the official view now is that prosecutions for public offences should be subject to executive control. It is evidently intended that the official designated in the statute should consider whether the proposed prosecution would be in the public interest, and not merely whether the prosecution is likely to succeed; and this interpretation has received judicial approval (*Re Vexatious Actions Act, 1896* [1914] 1 K.B. 122 at 134). Indeed, the discretion is absolute, so that the courts have no control over its exercise (*Ex p. Hurter* (1883) 47 J.P. 724). One may say that Parliament has sometimes imposed the requirement of consent because it is not altogether certain of the policy of the criminal prohibition, or because it realises that the criminal statute is so widely drawn that it can be used vexatiously. A good example is the Sunday Observation Prosecution Act, 1871, which provides that no prosecution under the Sunday Observance Act, 1677, can be instituted except with the consent of the Chief Constable (see *R.* v. *Halkett* [1910] 1 K.B. 50) or of two justices of the peace or a stipendiary magistrate. The Act of 1677 provides among other things that no tradesman, artificer, workman, labourer or other person whatsoever shall exercise his ordinary calling upon the Lord's day. Parliament has never been able to bring itself to repeal this measure, though it is now slowly being repealed by economic forces, since the penalty prescribed is only five shillings. Some express exceptions have been made by statute, and the courts have made others by restrictive interpretation. By putting prosecutions under the control of the police, Parliament has at least prevented the old statute from being made a weapon of social warfare by religious bigots.

Judges have shown themselves ready to give an extensive effect to the statutory restriction. In *Bros* (1901) 66 J.P. 54, a Jewish baker, who was closed on the Jewish Sabbath, sold bread on the English Sunday. A private prosecutor applied for a summons against him in respect of an offence against a local Act. The magistrate refused the summons, on the ground that the prosecution should have been brought under the Act of 1677, in which case it would have required the consent of the police or of a magistrate; and the magistrate added that if asked for his consent he would not have given it. He also said that even if he granted the summons and heard the case, he would dismiss the defendant without punishment under his statutory powers. The magistrate's refusal to issue the summons was upheld by the Divisional Court.

The rules governing prosecutions that require consent may be briefly stated. On a trial on indictment it is the duty of the clerk of the court to satisfy himself that the requisite leave has been given, the usual practice being to lodge the consent with the clerk. No evidence of the consent need be given at the trial unless the fact is challenged by the accused: *Dexter* (1899) 19 Cox 360; *Waller* [1910] 1 K.B. 364; *Metz* (1915) 11 Cr.App.R. 164. If he does challenge it, the consent can be proved by some person giving evidence that he received such consent in the ordinary course of correspondence with the official in question, and that he believes it to be signed by him: *Turner* [1910] 1 K.B. 346. It is specifically provided by the Criminal Justice Act, 1925, s. 34, as amended by the Post Office Amendment Act, 1935, that any document purporting to be the fiat, order or consent of the Attorney-General, the Solicitor-General, the Director of Public Prosecutions or the Board of Control, for or to the institution of criminal proceedings, and to be signed by the Attorney-General, the Solicitor-General, the Director of Public Prosecutions or an Assistant to the Director, or a Commissioner or the Secretary of the Board of Control, as the case may be, shall be admissible as prima facie evidence without further proof. The Solicitor-General is empowered to act in place of the Attorney-General under the conditions specified in the Law Officers Act, 1944, s. 1. Except under statutory authority, the official who is to give the consent cannot delegate his power: *Abrahams* (1881) 6 S.C.R. 10 (Canada); *Ford* (1888) 14 Q.L.R. 231 (Canada); *R.* v. *Halkett* [1910] 1 K.B. 50. If the requisite consent has not been given, a conviction cannot stand: *Bates* [1911] 1 K.B. 964. It is not altogether clear how much certainty in respect of the offence is required of the document giving consent: those who are concerned with this point should consult *Breckenridge* (1905) 10 O.L.R. 459 (Canada) and *Berwin* v. *Donohoe* (1915) 21 C.L.R. 1 (Australia).

There is an awkward piece of law on the time when the consent must be given. On a summary charge, it must be given before the information is laid: *Thorpe* v. *Priestnall* [1897] 1 Q.B. 159. Where the crime is tried on indictment the question when the consent must be given depends on when the prosecution is deemed to have been commenced. For the purpose of the time limit on certain prosecutions, this is generally held to be the laying of an information (see *West* [1898] 1 Q.B. 174 at 177), though under some statutes a prosecution may be held to commence even earlier, *e.g.*, on arrest or on the giving of a direction to prosecute (Rouse Jones, *Magistrates' Courts* (1953), pp. 53–4). Taking the information as the beginning of the prosecution, it follows logically that the consent must be obtained before the information is laid. This causes difficulty when the necessity for consent is at first overlooked. An illustration is where a person is charged with an offence not requiring consent to prosecution, and on the evidence appearing from the depositions it seems that he has committed some other offence which requires such consent. It may be desirable to commit the accused on both charges, but this apparently cannot be done unless new proceedings are taken. The court may allow a new information to be laid on which a summons is issued returnable forthwith; the evidence is then reheard. The cumbrousness of this procedure tempts the argument that for the purpose of official consent, the commencement of the prosecution should be taken to be the committal for trial, and this is the opinion supported by overseas authorities (*Tano* (1909) 10 W.L.R. 522 (Canada); *Johanson* [1922] 2 W.W.R. 1105).

Several statutes refer to a consent being given by a chief officer of police. An example is the Sunday Observation Prosecution Act, 1871, already mentioned. Another is the Road Traffic Act, 1930, s. 95, which provides that proceedings for an offence under Part IV of the Act (regulation of public service vehicles), other than a breach of the regulations as to the conduct of passengers, shall not in England be instituted except by or on behalf of the Director of Public Prosecutions or by a person authorised in that behalf by commissioners of a traffic area or a chief officer of police or the council of a county, county borough, or county district. "Chief officer of police" is defined in section 121 (1), as amended, by reference to the Police Pensions Act, 1921, which makes it mean the Commissioner of City of London Police, the Commissioner of Police in the metropolis, the chief constables of counties and boroughs, and the officer in command of the River Tyne Police. In *R.* v. *Halkett*, above, the question arose under the Sunday Observation Prosecution Act whether a police officer who is in temporary command during the absence of the chief constable can effectively consent to proceedings instead of the chief constable, and the court held that he could not. This decision appears now to be qualified for boroughs by the Police (Consolidation) Regulations, S.I. No. 1216 of 1948, reg. 3, which provides that the watch committee in a borough may appoint a deputy chief constable who shall, in the absence or incapacity of the chief constable or during any vacancy in that rank, have all the powers and duties of the chief constable not specifically excluded by resolution of the committee. It seems clear that a deputy appointed under this regulation could give a statutory consent; but the regulation applies only in boroughs.

It was said before that the power to prosecute may be confined to a particular official, such as a law officer. Where this is so, a prosecution by anyone else (even the police), though with the consent of the official in question, is a nullity: *Key* v. *Bastin* [1925] 1 K.B. 650. The rule does not mean that the official must appear personally before the magistrates to lay the information, and the law is satisfied if the official, having himself taken the decision to prosecute, authorises another to lay the information for him and in his name: *Foster* v. *Fyfe* [1896] 2 Q.B. 104. The information must be laid in the name of the specified official, unless of course the statute expressly allows an agent to be authorised to prosecute. An instance of such a statute is the Local Government Act, 1933, s. 277, which provides that "a local authority may by resolution authorise any member or officer of the authority . . . to institute . . . proceedings before any court of summary jurisdiction." It seems evident that under this section the member or officer so authorised may prosecute in his own name, even under a statute confining the power to prosecute to a local authority, for on a narrower construction the words would not give any power that would not exist without them. If the local authority purports to delegate to a person other than a member or officer, the delegation naturally falls outside the terms of the section. An illustration is *Oberst* v. *Coombs* [1955] Crim.L.R.

255, a case to which *The Times* rather quizzically gave the headline: " Police powerless to prosecute though man sang on Sunday." The singing alleged by the prosecutor was, as may be surmised, a distinctly secular affair, being a rendering by a professional entertainer in the saloon bar of the White Hart, Gosport, of a song entitled " Just a Simple Country Parson." The charge was against the holder of a licence granted under section 51 of the Public Health Acts (Amendment) Act, 1890, for breach of condition in allowing singing not appropriate to Sunday, contrary to section 51 (9) of the Act. Prosecutions under this section can be brought only by the local authority, and here the prosecution was instituted by a chief inspector of police in his own name, but it was sought to validate the prosecution by showing that the local authority had resolved that they should authorise the chief inspector to lay the information. The Divisional Court had no difficulty in holding that the prosecution was bad, the chief inspector being neither a member nor an officer of the local authority within section 277 of the Act of 1933. It is submitted that the prosecution would have been good if the chief inspector had laid the information in the name of the local authority, or in the name of its duly authorised officer or member. It would, therefore, be quite simple to regularise matters for the future by the local authority resolving that, say, its clerk should be empowered to prosecute, the policeman (if he is desired to act) subsequently laying the information in the name of the clerk.

There is a slightly complicated piece of law with regard to prosecutions under the Town Police Clauses Act, 1847, a piece of legislation that creates a considerable variety of offences. Where this Act is in force in a borough or urban district only by reason of incorporation in the Public Health Act, 1875, s. 171, prosecutions are governed by section 253 of the latter Act, so that they can only be brought by a party aggrieved, or by the local authority of the district in which the offence is committed, or with the consent in writing of the Attorney-General. This means that the police cannot prosecute without the consent of the Attorney-General. See *Sheffield Corpn.* v. *Kitson* [1929] 2 K.B. 322, refusing to follow *Jobson* v. *Henderson* (1900) 82 L.T. 260; *Savidge* v. *Brierley* (1938), noted in 108 J.P.Newsp. 121. It appears still to be capable of argument that a prosecution can be brought under section 28 of the Town Police Clauses Act by any constable who sees an offence committed under that section, and who arrests for the offence and takes the offender before a justice according to its terms, even though he has not obtained the consent of the Attorney-General.

Where the Town Police Clauses Act is in force in a town by reason of a special Act, it is likely that this special Act will contain no restriction as to prosecution, and in that event anyone may prosecute.

It has already been pointed out that where a statute merely authorises an official to prosecute, without saying that only he can prosecute, the power of members of the public to prosecute for the particular offence remains unaffected. Although this principle is undoubted, its application by an Irish court in the case of *Murphy* v. *Cryan* [1952] I.R. 225, may be queried, because there it had the effect of reducing quite a detailed statutory provision to a nullity. Even where a statute is not expressly restrictive of the power to prosecute, the only sensible interpretation may sometimes be to construe it as restrictive.

It may be remarked also that where a prosecution is required to be brought by an unincorporated body of persons, such as overseers, an information by any one on behalf of all is good: *R.* v. *Bedingham* (1844) 5 Q.B. 653.

Local authorities as prosecutors

The position of local authorities needs special mention. Some statutes require the consent of the local authority for a prosecution, and others empower the local authority to prosecute, sometimes exclusively. An example of the former (requiring consent) is the Riding Establishments Act, 1939. Examples of the latter (giving power to prosecute) are the Furnished Houses (Rent Control) Act, 1946, s. 10; the National Assistance Act, 1948, s. 56 (3); the Agriculture (Miscellaneous Provisions) Act, 1954, s. 9 (7); and the Protection of Birds Act, 1954, s. 12 (4). Local authorities are given power to enforce the Food and Drugs Act through sampling officers, and the Weights and Measures Acts through inspectors. For prosecutions under bylaws see A. N. Schofield, *Byelaws of Local Authorities* (1939), pp. 112 *et seq*.

The existence of these special statutes occasionally gives rise to a belief that in the absence of an enabling statute a local authority cannot prosecute, but this is not altogether true. It is held that an officer of a local authority may prosecute for a crime irrespective of whether the authority has power itself to prosecute; if it has no such power, the statement in the information that the officer is acting on behalf of the authority is merely surplusage: *Allman* v. *Hardcastle* (1903) 89 L.T. 553; *Lake* v. *Smith* (1911) 106 L.T. 41; *Duchesne* v. *Finch* (1912) 107 L.T. 412. The same is true if the officer who purports to act on behalf of the authority has not been authorised to take the proceedings: *Cole* v. *Coulton* (1860)

29 L.J.M.C. 125, *per* Crompton J.; *Giebler* v. *Manning* [1906] 1 K.B. 709. The question of the authority's power to prosecute, and of the official's authorisation to act, is important in the criminal proceedings chiefly in regard to costs. If the official is validly authorised to prosecute on the authority's behalf, an order for costs may be made against the officer or against the authority or both. The statutory provision for this is now in the Costs in Criminal Cases Act, 1952, s. 17 (1), which provides that the word "prosecutor" in the Act "includes any person who appears to the court to be a person at whose instance the prosecution has been instituted, or under whose conduct the prosecution is at any time carried on." But if the authority has not authorised the prosecution, or if, although it has purported to authorise the prosecution, it is not expressly or impliedly allowed by statute to prosecute, the undertaking of the prosecution by the local authority will be *ultra vires*, and it seems that the authority cannot be made responsible for costs even under the wide words of section 17 (1).

The rule that a prosecution by a local authority officer is valid although not authorised applies only where there is no statutory reference to the authority as prosecutor, or where the statute is merely enabling. If the statute is restrictive, and confines the power to prosecute to the local authority, an officer of the authority cannot prosecute as a member of the public, and must therefore show that he has been given power to act by resolution of the authority. This rule is interpreted with the utmost—one might say with unreasonable—rigidity; it is not enough that the authority has resolved that the defendant shall be prosecuted, and that proceedings are then commenced by the clerk, who is the officer of the authority accustomed to act on its behalf in prosecutions; the resolution must say in so many words that the clerk shall prosecute (*Bob Keats, Ltd.* v. *Farrant* [1951] 1 All E.R. 899).

Corporations as prosecutors

It was at one time thought that a corporation could not, strictly, enter into a recognisance to prosecute, but a member of the body was allowed to enter into one for the other members (*R.* v. *Mayor of Manchester* (1857) 7 E. & B. 453 at 458), and such a recognisance is now regarded as being that of the corporation. A recognisance can also be validly entered into by an officer of the corporation, such as a clerk to a local authority, but it must be stated that it is entered into on behalf of the corporation and that it renders liable the corporation's property (*Leyton U. D. C.* v. *Wilkinson* (1926) 43 T.L.R. 35).

Authorisation to prosecute

Where a statute requires a person to be authorised to prosecute by another person or body, it is not necessary that a separate authorisation or consent should be given in each instance, a general authorisation to a named person being sufficient. The authorities for this rule are *Tyler* v. *Ferris* [1906] 1 K.B. 94 and *Westminster Coaching Services, Ltd.* v. *Piddlesden* (1933) 149 L.T. 449. The decision in *Isle of Wight Ferry Co.* v. *Ryde Commissioners* (1861) 25 J.P. 454, which may seem at first sight to be *contra*, can be explained as resting on the special words of the statute, which said that "such local authority may *in each particular case* empower any officer or person to make complaints and take proceedings on their behalf." The words here italicised pointed to a requirement of specific authorisation (see *Sweny* v. *Carroll* [1942] N.I. 112).

The place of private prosecution in modern society

In view of the trouble and expense of bringing proceedings, as well as the strain of giving evidence in court, and the unwelcome publicity that it brings upon himself, a private person will normally prosecute only where his interest is deeply affected or his emotions strongly aroused, and not always even then. Even in early times, when passions were stronger than they are now and the desire to retaliate was not looked upon as uncivilised, it was thought necessary to supplement the thirst for vengeance by a regular system of presentment of crime by the tithing and grand jury. This has disappeared, as has the "Tyburn Ticket," which was given to successful prosecutors for certain serious felonies and which entitled the holder to exemption from performing the duty of parish constable and jury service. Another device used by Parliament, which still leaves traces on the Statute-book, was to reward the successful prosecutor by giving him a penalty or a share of the fine. It is not now thought right to give a prosecutor a pecuniary interest in getting a conviction, and nearly all the old "penal actions"—actions in the civil courts for penalties, in place of criminal prosecutions—have been abolished by statute. So also the local private prosecution societies of the eighteenth and nineteenth centuries have gone out of existence.

The disappearance of inducements for the ordinary person to prosecute means that the enforcement of the ordinary criminal law has been left more and more in the hands of the police. One reason why the victim of a crime may refuse to take action is that he may be sensitive about his part in the affair—for instance, in having been successfully defrauded—and will not be anxious to draw attention to his weakness. Even a large firm like a bank or insurance company may not be anxious for this kind of publicity, and in any event will be disposed to ask what positive advantage is to be gained from taking proceedings. The complainant will not usually get more out of a successful prosecution than the satisfaction, if any, of seeing the culprit punished. He may, in the case of indictable offences, obtain an order for payment of his costs, but the allowances made are generally inadequate, except where the Director of Public Prosecutions exercises his power of authorising the expenditure by private prosecutors of special costs which will be reimbursed by the State.

During the early years of the present century complaints were heard that the police conceived their duties too narrowly, so that the enforcement of the criminal law suffered as a result of their leaving too much to the individual aggrieved. As recently as 1928 Sir Archibald Bodkin wrote: "It does not seem to me to be expedient to leave to the police the conduct of prosecutions for offences which, whilst theoretically against the peace, are merely such as to affect the pocket of a person" (1 *Police Journal* 355). This attitude has had to give way to realities. Even banks have given up prosecuting for forgery and insurance offices for fraudulent claims, except in special circumstances, and the police have had to step in. Consequently, it is now true to say, as a general principle, that the police will undertake prosecutions for the ordinary run of crimes, including even larceny by a servant, embezzlement, and obtaining by false pretences. Where, however, a departmental store has made an arrest through one of its own detectives, the police will probably leave the prosecution in its hands, secure in the knowledge that a firm that has gone to the expense of organising the arrest of shoplifters will not leave them unprosecuted. Another exception made in ordinary police practice is in respect of common assault, the prosecution for which is left to the complainant, on the ground that the offence is not a serious one and there are likely to have been faults on both sides. The police will, however, prosecute for aggravated assaults.

The mere existence of a machinery of public prosecution is not enough to secure the proper working of the law if public co-operation is lacking. Professor Jerome Hall, in his *Theft, Law and Society*, shows that the problem of under-enforcement is acute in the United States, where only a very small percentage of known embezzlers are prosecuted, notwithstanding the complete machinery for public prosecution in that country. The reason is principally that business men and surety companies do not regard it as worth their while to make charges. The same problem exists in England.

However, there is a sanction for the particular offence of embezzlement because the offending employee is discharged without a character. Failure to prosecute the public thief or public cheat is a more serious matter, because his crime does not attract this natural sanction.

The savage punishments of earlier times did a great disservice to the administration of the criminal law, because ordinary decent persons were unwilling to involve even those who had wronged them in the calamity of a death sentence, transportation, or prolonged imprisonment. This consideration has not wholly ceased to operate even at the present time. In Galsworthy's play *Justice*, first produced in 1910, a solicitor's clerk who fraudulently altered a cheque from nine pounds to ninety, and was prosecuted by his employer, received a sentence of three years' imprisonment—not an unimaginable sentence even today, though it was a first offence. Yet one may surmise that after the experience of that sentence and its consequence. even so unemotional a man as James How would hesitate before informing against another clerk for a similar offence. Countless persons who have been robbed or defrauded, and who have either prosecuted or given information to the police, have afterwards wished for nothing so much as that they might have kept silent. The reluctance of good-natured persons to prosecute cannot be completely overcome until it is demonstrable that the outcome of the proceedings is for the moral benefit of the offender.

Another disincentive to prosecute would be removed if there were greater provision for privacy. Prosecutions for blackmail have been facilitated by allowing the name of the victim to be suppressed, and it has been suggested that the same course should be taken in all cases of confidence tricksters.

The criminal law is not an end in itself, and one may rest content if its work is done by other means. The assistance of the law of tort should not be despised, for an order of the court requiring a wrongdoer to pay compensation is not only a sanction for the wrong but in many cases a valuable form of social education. In this connection the rule that a felony must be prosecuted before an action can be brought for an accompanying tort needs reconsideration. The rule is supposed to emphasise not merely the right but the duty of private prosecution. Its purpose is to see that criminals are prosecuted; its effect, very often, is to protect them from all unpleasant consequences of their offences, even from having to make restitution. There is no point in prosecuting a thief if he will use your money to provide for his own defence and afterwards have nothing left. At the present day, when the system of private prosecution has been largely replaced by official prosecution, the tort-felony rule is an anachronism.

There are still trade and professional associations, like the Medical Defence Union, which make a practice of prosecuting to protect the privileges and interests of members. The Pharmaceutical Society prosecutes for breach of the Pharmacy and Poisons Act, 1933, and is given statutory status, particularly by section 25 of the Act. The Merchandise Marks Acts are enforced by the Retail Trading-Standards Association, a voluntary association supported by retail shopkeepers, which does much of the work that might have been expected to be performed by the Board of Trade; a manufacturing company may also prosecute under the Act to restrain unfair competition with its own particular trade. The Bribery and Secret Commissions Prevention League takes proceedings in cases of corruption. There are also the N.S.P.C.C. and the R.S.P.C.A., which, however, rely largely on persuasion and do not regard prosecution as their primary function; the former prosecutes in less than 2 per cent. of the cases it handles. These bodies find the cost of prosecutions a problem. According to figures given by the Retail Trading-Standards Association, a properly conducted prosecution will require an outlay of £75 to £100, even though the charge is being brought only in the magistrates' court and the result is a foregone conclusion. A difficult case in the magistrates' court might well put expenses up to £200, with little to be expected in the way of awarded costs in the event of success.

Another matter for consideration is the extent to which private prosecution needs to be curtailed in the interest of the due administration of justice. Something was said on this topic by Sir Travers Humphreys in his book of reminiscence, *Criminal Days* (London, 1946), pp. 131–2. The learned judge pointed to the danger of unfounded prosecutions being started without any control or investigation by the police, and remarked that "if there is one class of case more than another in which the private feelings of the prosecutor are likely to take precedence of his duty to the State, it is a case where the character of the prosecutor is attacked as in a charge of libel." Yet in this type of case a prosecutor who seeks the assistance of the police will probably be told to take the proceedings himself. Sir Travers also discussed at length the problem of women who bring false accusations against others of sending obscene libels or threatening letters, and pointed out how the danger of a miscarriage of justice in these cases is heightened when the prosecution is a private one. There have, in fact, been several instances of innocent persons being convicted on flimsy evidence in "poison pen" cases, and no one reading these cases can doubt that private persons should not be allowed to prosecute on this charge without control. The problem of libel is more difficult, because it is not now thought proper that a prosecution for defamatory libel should take place except in the most extreme circumstances of aggravation. These extreme cases might well be taken charge of by the police, the private prosecution for libel being excluded.

Limited Driving Disqualifications

By P. A. Palmer

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On page 430 of the July issue of the *Criminal Law Review* there are certain observations on the effect of the decision of the Divisional Court in *Petherick* v. *Buckland* [1955] Crim.L.R. 118. The contributor there seems to take the view that the decision of the Divisional Court was not only a bad one but one which would give rise to endless difficulties. These following further observations are designed to show that those observations are justified and that the Divisional Court, far from giving any help, have made the position more involved and have rendered the position of magistrates, their clerks and police officers, most difficult.

The respondent in *Petherick* v. *Buckland* was not represented before the Divisional Court, but the Minister of Transport appeared by counsel as *amicus curiae*. The Minister was only concerned to ensure that the Divisional Court did not hold that the words "class or description" were merely tautologous. It will be observed that although "class" is used by itself in section 4 (3) of the Road Traffic Act, 1930, in the proviso to section 6 (1) the word "description" crept in and caused the difficulty. The Divisional Court would not hold that class and description were tautologous although at one time they were inclined to the view that they were. The Minister was, therefore, relieved to find that his regulations were not *ultra vires*, but it is only fair to say that this aspect of the matter was never thoroughly investigated by the Divisional Court and indeed the Lord Chief Justice indicated in his judgment that it was a question which the court might have to decide one day. The great difficulty from this aspect was, of course, that the respondent was not represented. It now seems that any description appearing in the Act or the

Regulations made thereunder may be used in defining a limiting order of disqualification, in spite of the fact that some of the descriptions are objective and some of the descriptions subjective. For example, a public service vehicle may be an express carriage, a stage carriage or a contract carriage, and all these descriptions appear in the Act. Under the decision in *Petherick* v. *Buckland* a court could properly limit an order of disqualification to a contract carriage where a defendant was driving an omnibus being used as a contract carriage. The defendant could then drive exactly the same vehicle the following day if it was being used as an express carriage. Nothing more ridiculous than this could probably be envisaged. Then again, if a court used a description set out in the First Schedule of the Act (which is really only concerned with imposing speed limits on various descriptions of vehicles) the same vehicle might be a goods vehicle one day and a passenger vehicle the next. This is the effect of the decisions of the Divisional Court in the cases of *Blenkin* v. *Bell* [1952] 2 Q.B. 620, and *Woolley* v. *Moore* [1953] 1 Q.B. 43. The Ministry seem unconcerned and so far as is known are making no effort to resolve this ridiculous position by amending legislation in the new Road Traffic Bill. In fact, it is understood that they wish to preserve the position by making all descriptions in the Act, and any Regulations made thereunder, sub-classes within the meaning of section 2 so that it could not be contended in the future that the Regulations are *ultra vires*. It is to be hoped that one day the Divisional Court will be asked to express an opinion on whether the Regulations made by the Minister relating to descriptions which are outside the definition of class set out in section 2 are *ultra vires*. At first sight it would seem that there is good reason for the Minister's alarm and that a deep sigh of relief must have emerged from the offices of the Ministry when the Lord Chief Justice delivered his judgment on December 14, 1954. Nowhere in the Act is the Minister authorised to define descriptions of vehicles and the meaning of section 2 seems clear. The only satisfactory solution, it is submitted, would be to hold that " class " and " description " have the same meaning and that the only satisfactory way of interpreting this provision would be to hold that a limiting order of disqualification should relate to one of the specific classes set out in section 2, either as a class (*e.g.*, heavy motor-cars) or as a description (*e.g.*, mechanically propelled vehicles (not being vehicles classified under this section as motor-cars) which are constructed themselves to carry a load or passengers, and the weight of which unladen exceeds two tons and a half).

It must also be pointed out that the Divisional Court decided that although the decision of the magistrates sitting at Grays was right in this particular case any similar decision in future would be wrong. What possible logical or legal basis there could be for this decision it is difficult to know. *Petherick* v. *Buckland* was an Essex case and during the argument counsel related to the Divisional Court a case which had shortly before been investigated by the police of that county. A man had been disqualified and a limiting order had been made, obviously following the Lord Chief Justice's dictum in *Burrows* v. *Hall* [1950] 2 K.B. 476, and the disqualification was limited to private motor-cars. Within a very short period the defendant was driving the same motor-car on the road. By then he had obtained a "C" Licence and had removed the back seats and he contended that the vehicle was not then a private motor-car. This is the sort of thing which is likely to happen unless it is held as a matter of law, that the only way of making it possible to limit orders of disqualification is to follow the classes in section 2 thereby making it clear beyond all doubt to everyone concerned what a defendant may or may not do under the terms of that disqualification.

In a recent case at the Appeals Committee of Quarter Sessions for Essex one of the learned Deputy Chairmen decided that a limiting order of disqualification could be restricted to "passenger vehicles" within the First Schedule to the Act. In that case a man who normally drove a van in the course of his business was found using a private motor-car without insurance. Each decision seems to give birth to new difficulties and it is hoped that the matter will be made clearer by some positive action on the part of the Ministry at an early date. It must be conceded that the more one thinks of the decision in *Petherick* v. *Buckland* the more one realises that the Divisional Court on being faced with a problem which raised an intricate point of law, did not decide the question as a matter of law. The court, in fact, accepted that the Minister had the legal right to make vehicle descriptions. The basis for that decision appeared to be that the Minister had, in fact, used descriptions in the Regulations made under the Act. Devlin J. then said that as the Minister had done it he did not see why the magistrates should not do it. In their judgment, however, the members of the court indicated that magistrates could only use a description previously used in the Act or the Regulations. In other words the court, while refraining from saying that the Minister had the right to nominate vehicle descriptions, accepted that he had such right and directed that magistrates should not go outside such descriptions in future. It is unlikely, therefore, that magistrates will use a description such as " an Austin 7 of 1930 Vintage " but have the blessing of the court to use a description such as " passenger vehicle " which would enable an astute person to follow the example mentioned above and to drive exactly the same vehicle provided minor modifications were made.

Action for Contempt

The Niger delta must be one of the oddest places on the face of the globe: ten million acres of mud swamps and mangrove, broken only by a few patches of dry land and a network of tiny creeks and waterways, up which the tide waters race and swirl. It is an area with a strange fascination: the fascination of its desolation and loneliness, of teeming bird life, of its primitive unsophisticated fisherfolk who cheerfully lead a life of incredible hardship, of its history from the days when Portuguese and English ships sailed to these parts to barter cloth and trinkets against slaves, ivory and palm oil.

The Kopa District

I was in charge of Kopa District for months before I really got to know the creek areas. Most of Kopa District consists of dry land, but a large chunk of delta country was thrown in just in case the D.O. ever found that time hung on his hands. The landward part contained most of the people and most of the trouble, so that D.O.s treated the delta area as a convenient bolthole, a pleasant and untroubled spot where a chap could hide for a few days while he caught up with the paper work. Apart from a visit every second month to the larger villages it made few demands. Fierce disputes can, however, arise in these parts especially when villages clash over the ownership of fishing grounds, and when one of those disputes arose in the village of Ikem I decided it was high time that I paid a visit.

Touring by launch is always an enjoyable experience. One usually sets off with a pile of files that have previously been set aside as too difficult, but as one works in the cabin it is always pleasant to look out and see the white line of the wake swirling through the tentacle-like roots of the mangroves and setting the land-crabs scuttling. During the rains, launch touring can be purgatory, but in the dry season it is a constant source of delight. I certainly enjoyed my journey to Ikem, and when at a widening of the creek the launch slowed down and the anchor chain rattled out, I had that enjoyable sensation that always comes from seeing new places and new people.

As soon as the launch stopped, a dozen dug-out canoes shot out from the shore, and selecting the largest and most stable looking of them my orderly and I stepped aboard with as much dignity as the flimsy craft would permit. In a moment we were whisked ashore and I found myself shaking hands with the chief, the elders, and a commoner who was so full of bonhomie and palm wine that he insisted on making himself known. As soon as these introductions were over we walked through the huts and the stands of coconut palms which formed the village and entered the large mud and wattle building which was the village court-house.

The court

The court-house was a long building, with a dais at one end where a table and chair had been placed for my use. Behind me sat the elders of the village and in front, squatting on the mud floor, were the litigants, their witnesses, and those who had come along to see the fun. Beside my table stood the court scribe, armed with a pile of judgment books. All the cases which came before me had already been heard by the village elders, and it was the scribe's duty to keep a record of the evidence and the judgment in these cases. Any party, however, who was dissatisfied with the elders' judgment could appeal to me, and the purpose of my visit was to hear those appeal cases.

The scribe whispered in my ear that there were four cases, three fairly simple and the big fishing-grounds palaver. I knew that no matter what decision was given in this latter case the meeting would finish in an uproar. I therefore decided to take complaints first, then the three simple cases, and keep the fishing dispute to the end. During complaints, anyone with a difficulty has the chance to speak to the D.O. and get his advice. As soon as this was announced, a dozen people jumped to their feet to make their complaints and I began to give advice to the best of my ability.

Their complaints followed the usual pattern. One man could not afford to pay his tax, and another was having trouble with his wife. A boy wanted to join the Army, and an old man wanted news of his son who had gone as a labourer to Fernando Po. All these complaints I had heard a dozen times in a dozen other places, but each one had to be listened to with the appearance of concentration, and the answer had to be given as if it was a sudden inspiration and not a well-worn formula. Every complainant carried a carefully sealed envelope which contained a petition setting forth his version of the case in the most florid terms, and every petition had to be read before the complainant began his speech.

The petitions presented to me were written in the most appalling English. All were obviously the work of the same hand and they contained a curious amalgam of legal tags, officialese, slang, polysyllabic words and pidgin English. When complaints were finished I noticed the man who was obviously the village petition-writer, an incongruous figure in a bright blue suit. Could he not, I suggested, make his prose style a little less ornate? There was one readily available source of good English—I indicated the Bible which lay on the table for swearing in Christian witnesses—and he could not do better than copy its simplicity. If he really wanted to see a good petition he should look at the preface which was a letter written to King James by the translators of the Bible. My advice was taken in good part, he promised to do his best and I promised to watch his progress with interest. After an exchange of grins I turned to hearing the cases.

The first three cases were soon dealt with. They were all family disputes where the elders were in their element. I upheld their decisions with a few words of praise which set their grey heads nodding with approval. Then a hush fell over the court as the scribe began to call forward the parties in the fishing-grounds dispute. A few late-comers rushed into the court-house and squeezed themselves into the few vacant spaces which remained on the floor. Obviously something exciting was expected.

The King's judgment

They got their first taste of excitement when they saw the look of astonishment on my face as the court scribe read out the charge: "Contempt of His Late Majesty King George." I took a quick glance at the judgment book to assure myself that the scribe had not taken leave of his senses and then demanded what this was all about. "King George done judge dis palaver" was the plaintiff's reply and he thrust under my nose a thick wad of typescript. I opened it up and found a judgment of the Privy Council, granting the plaintiff the fishing rights. That, of course, made things much clearer. To these simple people, the Judicial Committee of the Privy Council was not a bench of eminent judges qualified under various statutes in a quiet room in Downing Street to hear colonial cases.

They took it for granted that the King, like Solomon of old, had personally considered the case, and had decided that the plaintiff's clan had the right to build fishing traps in the swirling waters of that lonely creek. It was to get a royal judgment that the clan had gone to the tremendous expense of taking the case to the highest court in the Empire. The King had decided: to flaunt his judgment was contempt for his memory.

The court's judgment followed the Privy Council decision, but in view of the extraordinary wording of the charge I could hardly allow the judgment to stand. Reluctantly I quashed the case. In doing so, however, I pointed out that the plaintiff's claim was sound, and advised him on the correct way to go about enforcing it. I then decided to improve the occasion by delivering a homily about the monarchy. The Queen, I said, was the head of the Commonwealth, and while some people wanted self-government for Nigeria now and others wanted it in a few years time, no one disagreed that the country should remain in the Commonwealth. Membership of the Commonwealth was a sign of equality, not of subjection. It was a family which contained great nations and small nations, but between them there existed the same sort of equality that exists within any family. We were all, black and white, subjects of the Queen, and we all had the proud duty of loyalty to her and obedience to the laws which were made and administered in her name.

Having said this, I left the court-house, which buzzed with conversation as the people discussed the outcome of the case. I made my way back to the launch, and after a meal I spent the rest of the afternoon in a canoe watching birds through a pair of binoculars. Night was falling when I returned to the launch to find an envelope waiting for me on the cabin table. It was addressed to "Her Majesty the Queen through the D.O. Kopa," and when I opened it I found that my friend the petition-writer, now writing on behalf of the defendant in the fishing rights case, had taken my advice to heart, even to the extent of a little cribbing from the preface to the Authorised Version. But in the end his old style had reasserted itself. The petition read:

"Great and manifold were the blessings, most dread Sovereign, which Almighty God, the Father of all mercies, bestowed upon us the people of Nigeria, when first he sent Your Majesty's Royal Person to rule and reign over us. With reference to Ikem Court case No. 3 of 1953, we mean no contempt. Madame, we love you too much; likewise your deceased dad."

G. I. H.

Recidivism

By Jean Graham Hall, LL.M., *Barrister-at-Law*

"The stage army of recidivists who cross and recross the prison gates." Thus did the late Sir Alexander Paterson refer to those criminals who repeat their offences many times, and neither learn from their experience in prison nor make use of "the second chance" which a court may offer a prisoner convicted of yet another crime. The lawyer, prison reformer and psychiatrist all puzzle over the recalcitrants with their continued repetition of crimes. Why do they do it? How should we treat them?

These were the questions discussed at the Third International Congress on Criminology held at Bedford College, London, in September, 1955.

Definitions of recidivism

The Congress decided that for different purposes, we need different definitions. A lawyer would say that a recidivist is a person who, after having committed a first crime for which he was legally tried, convicted, and dealt with, then commits another crime. This definition, however, fails to take into account those who continue their criminal activities without being caught. During all the discussions, speakers tried to bear in mind this latter group, constituting an equal menace to society and as difficult to deal with as those who are caught.

Care must be taken to differentiate between (a) the recidivists who accommodate themselves to anti-social activities and may be termed "professional criminals" and (b) others, who repeat their offences because of some psychological or sociological maladjustment.

The large number of countries represented at the Congress made one realise that offences against the criminal law in one country were not necessarily offences in another country. A person regarded as a recidivist or habitual offender in one country might be a law abiding citizen in a second.

Causes of recidivism

In discussing causes of recidivism, Dr. G. Zilboorg, of U.S.A., said: "What do we know of any human personality; what goes on in the realm of thoughts?" He questioned the point where the boundary lay between fantasy and the acting out of thoughts. The average human being, according to Dr. Zilboorg, does not want to act out his day dreams. A certain amount of "de-personalisation" must be present to achieve this. Dr. Zilboorg emphasised the continual need to study individuals—for each man lives within himself.

A section of the Congress dealt specifically with this question of causes. Those taking part in the discussion decided that it was impossible to isolate causes of recidivism from causes of criminal behaviour in general. Social, economic, psychological and individual factors all play a part.

Reference was made to those recidivists who made a deliberate choice of profession—*i.e.*, those professional criminals referred to above. Emotional factors, such as pride, resentment and disappointment, contribute to a man's decision to follow this sometimes lucrative career. Social factors, speakers reminded their colleagues, vary greatly from one country to another. The place of the penal system in the treatment of the first offender was also stressed.

International forgers

Recidivism is prevalent among forgers. Professor T. Wurtemberger of Germany gave a number of examples of forgers of works of art with previous convictions. Van Meegeren, the notorious Dutch painter who made a fortune in recent years, had previous convictions for fraud and the falsification of documents.

These forgeries, Professor Wurtemberger explained, were the work of clever professional criminals who sold their wares at fabulous prices to credulous buyers. The buyers, if they came to doubt the authenticity of their purchase, realised the worthlessness of the article and frequently perpetrated the fraud by selling the painting in a foreign country. This added to the difficulty of prosecution, owing to the international entanglements involved.

Professor Wurtemberger pleaded for the co-operation of all nations to strive against this traffic. In his view, the present card index system of Interpol, in Paris, was insufficient to deal with the racket.

Other contributors to the discussion gave instances of non-acquisitive motives of some large-scale forgeries. Remnants of medieval murals were found in St. Mary's Church, Lübeck, when rebuilding commenced after war-time destruction. Two architects undertook the work of restoration, which received universal admiration. Later the architects admitted that only three of the murals were genuine Renaissance, the others being copies by themselves. The likelihood of discovery at this stage was exceedingly small, and of no benefit to the architects, who received only punishment. They satisfied what could be described as a morbid ambition for the limelight by confessing to their deception.

One contributor to the discussion questioned the psychology of the public—which admires what it considers genuine, but decries the same work of art, albeit a most competent painting, when told of the forgery.

Murderers

Murderers, by contrast, are rarely recidivists. Dr. J. A. Hobson, in dealing with the emotional reaction of arrested murderers to their crime, their trial and their sentence, stated that all seemed uninterested in their recent activities, and lacking in normal emotional reaction.

Records at Brixton Prison for fifty consecutive murderers showed that they ate well, slept well, and gained weight. Dr. Hobson suggested several factors operated in this connection. The act of killing might be therapeutic ; a great calm and a feeling of release following the previous storm of emotions. Murderers, he said, possessed a degree of hysterical disassociation which blocked out facts of present or future importance. The physical act of surrender or committal into the hands of those greater than himself gave the murderer a feeling that there was nothing he could do about the matter now. Finally, some murderers desired the notoriety and publicity attendant upon their impending execution.

Capital punishment is sometimes regarded as a deterrent to would-be murderers. Apprehension at its possible removal should now be considered in the light of this last conclusion.

Early careers of recidivists

The recent researches undertaken in the field of prediction studies caused a great deal of animated discussion at the Congress. Champions of prediction methods maintained that it was now possible to predict, with a high decree of accuracy, whether or not a young offender would follow a delinquent career.

Professor Erwin Frey, who had undertaken prognostic research in Switzerland, stressed the need to discover better methods of prediction by validation. He said: "There is no denying the possibility and usefulness of the system." He envisaged no robot sentencing machine, but helpful guides to courts in which biological, cultural and social factors were scientifically and systematically assessed.

Treatment

When considering treatment of recidivists, speakers realised that as yet we have insufficient experience to claim that the problem of recidivism could be eliminated and entirely defeated. Professor Tullio, of Italy, spoke of the need to survey the problem in a large field, with research undertaken in collaboration with experts of many different disciplines.

Sixty-seven per cent. of adult recidivists are guilty of irregular conduct in childhood. The paramount need to re-educate children and prevent the long and doleful case-history of recidivism was obviously well understood by the Congress.

Dr. Denis Carroll, President of the International Society for Criminology, in the final session of the Congress, spoke of the feeling of loneliness of a prisoner. No one, the prisoner feels, respects him as a human being. Dr. Carroll advocated the extension of group therapy with a specially selected group of prisoners, such as now takes place at Wormwood Scrubs with remarkable success.

Depositions by Dictaprinter

By R. H. Harbour

Clerk to the Justices, Yeovil

Examining justices have for many years differed in their methods of recording depositions. That different methods continue to be employed in the various courts seems to suggest that opinion is by no means unanimous as to the best method to be adopted in carrying out this important duty, or possibly that facilities for trying other methods are not available.

No one who has studied the report of the Departmental Committee on Depositions (Cmd. 7639) can fail to be impressed by the importance the committee attached to depositions in committal cases. In examining the present use and value of depositions the report stated that the first and foremost consideration to be borne in mind was that committal proceedings before examining justices were no mere formality. The committee emphasised its unanimous opinion that in taking depositions justices and their clerks were performing a duty as important and valuable as any other that they were called upon to discharge. This note was again sounded in a later statement that the proper taking of the depositions of witnesses was the bedrock of our system of administering justice in criminal cases.

A duty so important demands that the closest attention be given to the method of its discharge if the utmost efficiency and despatch are to be consistently attained. We propose briefly to consider some of the methods at present employed, and in particular, to examine more closely the question whether by means of a different approach to the subject it may be possible to fashion from any of the existing methods an instrument ideally suited to the recording of depositions within the existing legal framework. It may be useful in passing to refer to certain mechanical aids available today, and the possibility of future developments in the scientific field, with the object of considering whether these are likely to have any practical value in this branch of court work. This may be helpful if only to make clear some of the basic requirements of the present system for recording depositions.

Present methods of taking depositions

It is probably true to say that the method of recording depositions at present used in a court is determined largely by the facilities available. Practical necessity, rather than a free choice based upon an examination of possible alternative methods, decrees the means to be employed. If the pen is the only instrument available the depositions will be hand-written. This time-honoured method may be discarded if other facilities are available which appear to offer a more effective method.

In the majority of courts depositions are at present recorded (1) by writing in longhand, (2) by shorthand with subsequent transcription, or (3) directly on to a typewriter.

The longhand system has the advantage of being silent, but its disadvantages are that it is much too slow for modern requirements, and legibility (which varies with the writer even at a relatively slow speed) deteriorates with an increase in speed and the length of the writing period. There is the further disadvantage that the required number of copies of the depositions cannot be made simultaneously with the original, which means that further time is taken up in the subsequent copying of the depositions.

The shorthand method, apart from the question of its legality (*vide* paragraph 20 of the Departmental Committee's report) is in practice probably a slower method, due to the length of time that must necessarily elapse between the spoken evidence and its subsequent presentation in written form. Even where two shorthand writers are employed, one of whom leaves the court to transcribe his notes whilst the other writer takes over, the method cannot be regarded as being the best. The practice of taking the depositions in shorthand and then adjourning the case for some days while the note is being transcribed, so that the witnesses have to attend the court again to have the transcript read over to them, was described by the Departmental Committee as being most undesirable, and one that might well lead to a failure of justice.

The important difference between recording evidence in deposition cases and in other proceedings in magistrates' courts is the urgency in the former case of converting the spoken word into a visible form. The ideal system will among other things be capable, subject to an important qualification to which we shall return later, of achieving an almost simultaneous transcription of the spoken word into writing or printing, and of having the deposition ready for signature immediately the witness has concluded his evidence. In short, it will function almost as a dictaprinter; a machine that will immediately print (with the required number of copies) the words as they are spoken.

The dictaprinter

The invention of a dictaprinter depends not only on the solution of the many technical problems involved but also on the question whether the results of such an invention are likely to prove sufficiently attractive to induce the inventor to work on it. Voice-operated machines are already in existence, and certain magnetic recorders used for recording messages received at irregular intervals operate on this principle. An incoming message sets the recorder in operation, and it is automatically switched out of operation during periods when no messages require recording.

A magnetic recorder that automatically records and reproduces telephone messages has been developed on the continent. This instrument answers the telephone when the subscriber is not present, and after the telephone has rung a few times a recorded message informs the caller that the machine is ready to record. By means of an ingenious system of voice-operated relays the subscriber can have his telephone messages repeated to him by telephone, without at the same time giving access to unauthorised persons. After the instrument has announced that it is ready to accept a message, the calling party can by using a code word make the instrument start counting. The instrument slowly repeats "one, two, three . . . ten." The subscriber pronounces the words "Hello, Hello" after three of these numbers, upon which the instrument will repeat all recorded messages into the telephone. The subscriber can set the instrument to respond to any three numbers he wishes, and the possible number of combinations is high enough to ensure secrecy.

The possibilities of the magnetic recording system cannot be considered in the present discussion,[1] although we would add our view is that this system offers a valuable aid to efficiency and despatch of the business of the court in selected cases which do not involve committal proceedings.

Mechanical aids of the automatic dictaprinter type which we have discussed would, in our opinion, be quite impracticable for recording depositions within the existing legal framework. They would result in a verbatim record of the committal proceedings, and the inclusion of a great amount of irrelevant and inadmissible matter. Such a record would assume unwieldy proportions and increase the difficulty of discovering the salient points in the evidence. The Departmental Committee came to the conclusion that depositions in the form of question and answer were neither practicable nor desirable, and were in complete agreement with the view that depositions should contain a full and accurate record in narrative form of all admissible evidence by the witnesses.

The weaving of question and answer into narrative form, which has to be done almost simultaneously with the evidence given, calls for special care in avoiding the danger of so wording the sentences that when the depositions are later read they suggest the words are the spontaneous choice of the witness himself, whereas, in fact, they may have been suggested to him by the form of the question. The exclusion of the inadmissible and the irrelevant from the evidence of the witness calls for a sound knowledge of the laws of evidence and a wide experience in their application.

Two factors emerge from our discussion which we suggest are the basic requirements of the best system at present available for recording depositions, namely, (1) the human contribution is indispensable, and (2) the mechanical process of coverting the spoken work into written form must be carried out almost simultaneously. These two factors must be wedded to each other if best results are to be obtained.

Typewriting

If the best system is to be developed from existing methods it is apparent that of the three methods now employed, *i.e.*, longhand, shorthand, and typewriting, the last offers the more promising material.

The legal knowledge and experience necessary to do deposition work have already been discussed. The difficulty lies in finding persons who can combine such knowledge and experience with the ability to type accurately at very high speeds. The individual who has a mastery of these requirements can, we suggest, provide the best means at present available for recording depositions, for if his skill and ability are sufficiently high he can function in the capacity of a human dictaprinter.

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[1] See " Court Proceedings and Magnetic Recording " [1954] Crim.L.R. 854.

Opinion may differ on the question of typing speeds necessary for expert deposition work. No typist normally works at his maximum speed, and generally speaking the wider the margin between his average speed and the maximum he can attain the less conscious he becomes of a sense of strain. The ability to reach high speeds is necessary, not only for this reason but because such speeds are frequently called for in verbatim typing, especially when police witnesses give evidence.

Information we have gathered from a recent inquiry into the question of typing speeds has shown that highly skilled typists with special training can type for sustained periods at eighty words a minute. In a high speed test speeds of 100 words a minute were attained by a number of entrants, typing unfamiliar material. The average speed attained by those taking the test was over seventy words a minute. Our own view is that for deposition work of the standard indicated a typing speed of eighty words a minute should be attainable.

The typewriter

A high standard of work calls for the use of proper tools, and a little extra care when buying a typewriter may subsequently save trouble. If the initial cost seems high the policy of buying only the best is unquestionably sound.

The choice will be between three types, *i.e.*, the standard typewriter, the "noiseless," and the electric models, but before considering some of the individual features of these machines it may be useful to consider two matters of special importance in the recording of depositions by typewriter, namely, noise and fatigue.

A criticism levelled at the typewriter as an instrument for recording depositions is that it tends to be noisy, and therefore a rather disturbing element in the proceedings. Much has been done in the design of new models of the standard machine to reduce noise, but these machines still make more sound than the special "noiseless" model. The problem is not peculiar to the typewriter itself, but is influenced by other factors such as the mounting of the machine and, in particular, the acoustics of the court-room. The importance of the latter factor, and the effects of reverberation, are often overlooked in efforts to damp the noise produced by the machine.

There appears to be little difference in the amount of noise produced by the standard typewriter and the electric model. The motor on the latter is practically silent, and most of the noise made by either model is produced by the type striking the platen. Much can be done to reduce noise to a minimum if the problem is approached from the right angle, but it seems to us that the amount of noise produced by the machine is more than compensated by the many advantages this system offers. There may be some difficulty in obtaining new " noiseless " machines, as these do not appear to be available in this country at the present time. Information we have been able to obtain from the manufacturers is that at the time of writing Grade " A " rebuilt machines are generally available with four to six weeks delivery.

Fatigue

The question of fatigue arising from mental strain and physical exertion is as interesting as it is important. The taking of lengthy depositions, often at sittings lasting several hours without a break, obviously imposes a strain on the mind and physique irrespective of whether the depositions are taken in longhand, shorthand, or typewriting. Apart from the actual writing of the depositions, the clerk must keep his mind alert to the admissibility of the evidence, ensure that the narrative accurately sets out what is said, and cope with witnesses who mumble and find difficulty in expressing themselves clearly. The mental strain can be lessened to some extent by carefully ensuring that the physical effort involved in the actual recording of the depositions is reduced to a minimum, hence the importance of the right choice of medium for recording.

In the " noiseless " machine the type-bar travels a much shorter distance than in the other models, covering a distance of one and three-quarter inches to the printing point and travelling in a straight line. This enables the keyboard to be operated with greater speed than on the standard machine, and with less fatigue. A comparison between a standard typewriter and an electric typewriter of the same make showed that in the electric machine a weight of 60 grams was required to operate a key, which was the only physical act necessary as the motor provided the power. In the standard machine a weight of 82 grams falling from a height of 59 millimetres was required for the operation of a key when the touch control was in the lightest position. As the control was progressively increased the effort required to operate the key correspondingly increased. In a fairly lengthy deposition case it would appear that, using the standard machine, the total weight exerted at the finger tips may amount to several tons. The advantages of the electric machine are obvious; all the movements are electrically operated and controlled from the keyboard, and the lightest touch on the keys is sufficient to operate the machine at any speed irrespective of the number of carbon copies required.

It seems a reasonable conclusion that no other system of recording depositions at present available has the same possibilities and advantages as the system employing the typewriter, and that where possible the "noiseless" or the electric machine should be chosen in preference to the standard model. The success of the system largely depends upon the ability and skill of the operator, and in the hands of an expert it is capable of producing work of an extremely high order. It has the economic advantage of effecting a substantial reduction in the length of the hearing, with consequent saving of the time and expense of persons attending court.

We have referred to the difficulty of finding persons sufficiently skilled to work the system at a high level. Opportunities for special training and for frequent practice of the art (we use the term deliberately) are obviously necessary. Courts in large centres of population where committals are almost a daily occurrence offer all the facilities necessary for gaining legal experience, provided these are made available to members of the staff who are anxious to specialise in this branch of court work, and there is usually little difficulty in securing the necessary technical instruction and practice in typing.

The problem may be more difficult in the smaller areas, but in recent times a new and important factor has appeared on the magisterial scene in the form of county magistrates' courts committees. As a result, all whole-time staff have passed out of the employment of the individual clerks to justices into that of the central authority for the county, and many petty sessional divisions have already been amalgamated. Magistrates' courts committees have a unique opportunity of providing both the training ground and the necessary incentives to members of their staffs who desire to gain special experience and proficiency in this branch of magisterial work.

Committal proceedings vary in length and complexity, and lengthy and difficult cases are not unknown in the small petty sessional divisions. Few courts, especially those with limited staff, would not welcome the opportunity of expert assistance in typing the depositions when confronted with a lengthy committal case, and in these days of rapid transport there should be little difficulty in offering such assistance as the court may desire, provided trained personnel were available. The opportunity should not be missed of encouraging the younger entrants into the service of the courts to attain a high degree of proficiency in this important branch of its work. Perfection in any sphere is attained only by a fastidious attention to detail, for, as a great artist centuries ago declared: "Trifles make perfection, but perfection is no trifle."

"*Contrary to . . .*"

By J. F. JOSLING, *Solicitor*

The gravamen of the appellant's complaint to the Courts-Martial Appeal Court in *R.* v. *Bryant* [1955] Crim.L.R. 505 was that he had been charged under a section of the Army Act which by reference carried a maximum penalty of five years' imprisonment, whereas the facts of his case exactly fitted another section under which imprisonment for two years was the most that could be imposed. His actual punishment was lower still in the scale laid down in section 44 of the Act, namely reduction to the ranks, and with this sentence the Appeal Court did not interfere. What makes the case interesting beyond the confines of military law is a passage in the judgment delivered by Lord Goddard C.J. relating to the form of words used in the charge sheet in specifying the civil offence of stealing. For the section under which the appellant had been convicted was section 41 of the Army Act (we shall have to get used to calling it section 70 when the Army Act, 1955, comes into force, probably in fourteen months' time) which makes military crimes of offences punishable by English civil (*i.e.*, non-military) law. The charge sheet alleged the civil offence of larceny "contrary to section 2 of the Larceny Act, 1916."

Now there does not appear to be any statutory provision or rule of procedure which requires the prosecutor before a court-martial to name the statute or section under which the charge is brought, though this is almost invariably done in the charge sheet. On the other hand, rule 4 (3) of the Indictments Rules scheduled to the Indictments Act, 1915, and rule 77 (2) of the Magistrates' Courts Rules, 1952, alike require, with regard respectively to the counts of an indictment and to informations, summonses and warrants laid before justices or issued by them, that if the offence charged is one created by statute the document in question shall contain a reference to the statute creating the offence. "Contrary to section x of the Y Act" added to the statement of offence sufficiently meets this requirement. To distinguish other offences some benches and their advisers insist on the use of the expression "contrary to the common law," or, bearing in mind the august provenance of their jurisdiction, "Against the Peace of Our Sovereign Lady the Queen," or just "Against the Peace." Strictly that is superfluous, but an omission to refer to the statute in laying a non-military charge of a purely statutory offence may be a fatal defect. Indeed, in *Stephenson* v. *Johnson* [1954] 1 W.L.R. 375, more than the mere quotation of the section actually creating the offence would have been required to render the proceedings in order. The section cited in the information in that case was one which gave punitive sanction to a wages regulation order containing a complicated schedule. It was held that the relevant paragraph in the schedule as well as certain factual allegations should have been detailed so that the defendant should know what case she had to meet.

Lord Goddard's point on this aspect of *R.* v. *Bryant* was that simple larceny is not an offence created by statute at all: it was always an offence at common law. Therefore, said his Lordship, the charge sheet might have left out the words "contrary to section 2," and have simply said, "committing a civil offence, that is to say, larceny." This is presumably not intended to be a very serious criticism. No doubt every word saved is so much time and money gained, and the profession will be very ready to take a hint from such a source. But it will surely not render an indictment bad to put in section 2.

Now that attention has been drawn to the point, it is easy to see that all that section 2 of the Larceny Act does is to prescribe a maximum sentence for any form of stealing for which no special punishment is provided elsewhere. It defines simple larceny to that end and declares it a felony, but it does not create an offence in the sense of making criminal any act or conduct which was not already punishable at common law. The statutory provisions which had to be brought in to deal with stealing by a bailee and with embezzlement are instanced by Lord Goddard by way of contrast. Embezzlement is an easy one from the point of view of the draftsman of indictments and charges. The offence itself is wholly statutory, and "contrary to section 17 (1) (*b*) of the Larceny Act, 1916," satisfies the rules very neatly. Bailee cases are not so obviously soluble. Apart from the enactment now contained in the proviso to section 1 (1) of the 1916 Act, a bailee could not steal unless he "broke bulk." But the offence which the Act says he can now commit whether or not he so behaves as to determine the bailment is not a special one created by statute. It is plain stealing. Accordingly, it seems proper to omit any statutory reference in an indictment or information charging a bailee with simple larceny, making sure, however, that the particulars sufficiently set out the facts relied on.

There are other complications arising out of the Larceny Acts. Dogs and title deeds are two examples among many of things which were not capable at common law of being stolen. Is the fact that these species of property can now form the subject of a charge of larceny attributable to the modern statutory definition of things capable of being stolen (section 1 (3) of the Act of 1916)? Or can it be said that section 18 of the Larceny Act, 1861 (still extant, and in use as regards first offences of dog-stealing) and section 7 of the 1916 Act "create" respectively the crimes of stealing a dog and larceny of documents of title? The former alternative may be theoretically more tenable, but the safer course will no doubt be in such debatable cases to name these sections in charges. And in support a draftsman accused of indulging in redundancies could cite the forms of indictment appended to the Rules in the Indictments Act, 1915. Form 7 in the Appendix exemplifies a count for "larceny contrary to section 67 of the Larceny Act, 1861." That section, now represented by section 17 (1) (*a*) of the 1916 Act, though dealing with clerks and servants, is not concerned with the purely statutory offence of embezzlement; it lays down the punishment for the simple theft by a clerk or servant of a chattel belonging to or in the possession of the master or employer, and is essentially, if we have our history right, declaratory of the developed common law. As early as the sixteenth century, before any intervention by Parliament, the courts perceived that a servant had, not possession, but mere custody of goods with which his master had entrusted him and so could be guilty of stealing them. If this is so we have here stumbled upon an instance of the legislature counselling the citation in an indictment of a statutory provision which for this purpose seems indistinguishable from section 2 in that it is not one which creates an offence.

What is the position if we look beyond crimes of the theft type? Lord Goddard mentions in *R.* v. *Bryant* that there were about six offences recognised by the common law. One assumes that his Lordship is referring to the original common law felonies—a category which, as he pointed out in *R.* v. *Morris* [1951] 1 K.B. 394, the judges never attempted to enlarge as they did misdemeanours. Murder, manslaughter and rape are instances, and the common form indictments cited in the books show them to fall clearly within the scope of the *Bryant* dictum. The Offences against the Person Act, 1861, is in each case omitted from the statement of offence. In prescribing the punishments for these crimes it does not even define them.

But it is important to look at the particular enactment when an Act of Parliament is found apparently to deal with a crime which was already a common law offence. Some criminal statutes have promulgated offences which do not exactly coincide with a common law crime of the same name. Thus at common law the felony of arson consisted of the malicious burning of *another's* dwelling-house. This now usually falls within section 3 of the Malicious Damage Act, 1861, in the sense that that section refers to any house, whether in the possession of the offender or any other person; but on the other hand, the statutory offence postulates an intent to injure or defraud, which may not be the same as common law malice. Similarly the felony of burglary and the misdemeanours of forgery and perjury as known to the common law have been virtually superseded, but not abolished, by statutes which name these offences but describe them as consisting of ingredients not in all respects similar to those theretofore held to be indispensable. In these cases it seems reasonably clear that new offences have been created by statute parallel rather than coincident with the old. A prosecutor who sets out to prove statutory perjury or arson, therefore, or burglary or forgery by statute must cite the relevant section in framing his charge.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Review. They should be sent to the EDITOR, *Criminal Law Review*, 3 CHANCERY LANE, LONDON, W.C.2. *Every effort will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect.*

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Practice and Procedure

Magistrates' Courts

The "omnibus" oath

In spite of a hundred years of statute-making and cases stated there are still in summary jurisdiction matters of common practice whose validity gives rise to questions to which the law provides no direct answer. One of these is what may be called the "omnibus" oath taken by an informant or complainant in a form of words which covers his evidence in a number of cases to be heard at the same sitting. Rate and income tax collectors are probably the witnesses most frequently sworn in this manner, for the persons they summon rarely appear in court and the constant repetition of the oath for each individual case would, in busy courts dealing with hundreds of such summonses, seem almost indecent, besides adding appreciably to the time taken by the hearing. Similar considerations have led some courts to adopt the same procedure in the case of parking and speeding offences where often one constable has to give evidence in a number of prosecutions heard in the same list.

A note in the current edition of Stone's *Justices' Manual*, at page 313, suggests that an oath in this form may be invalid, and cites an article at 63 *Justice of the Peace* 98. That article was, of course, written when the Summary Jurisdiction Acts were in force. Reference to it shows that the writer arrived at his conclusion with reluctance, but felt obliged to do so in view of certain words used in those Acts. Those words have not, however, been reproduced in the consolidating and repealing Magistrates' Courts Act, 1952, and there are no corresponding words on which the arguments used by the writer in 1899 could now be founded.

The sections of the 1952 Act which deal with the matter are section 13 (2), which reads "the court, after hearing the evidence and the parties, shall convict the accused or dismiss the information", and section 78, which states that "... evidence given before a magistrates' court shall be given on oath." No form of oath is prescribed by the Magistrates' Courts Act, and section 2 of the Oaths Act, 1909, merely enacts that "any oath may be administered and taken in the form and manner following: ... 'I swear by Almighty God that ...', followed by the words of the oath prescribed by law." As there are no words prescribed by law for use in summary proceedings it seems to be open to magistrates' courts to use any formula which covers the matters to be investigated. That being so, why should it not be perfectly lawful to administer a comprehensive oath for a number of separate cases?

To argue to the contrary it would seem necessary to regard the hearing of each information as a proceeding which, for all purposes, must be entirely self-contained. But this line of argument breaks down when—as must happen on occasion—several informations are tried together. For example, a witness giving evidence against a defendant who is being tried at one and the same time for dangerous and careless driving must take an oath to cover both informations. A similar situation arises if, as is often the case, an information against a driver for using a motor-vehicle in a defective condition is heard together with an information against the owner of the vehicle for permitting that unlawful user. The informations in these circumstances do not cease to be separate informations merely because they are tried together, and, if the evidence given in support of them may lawfully be covered by a comprehensive oath (as it must inevitably be) it would appear to be equally lawful and raise no difference in principle to administer a similar oath when a series of informations are tried separately.

One qualification needs to be made to this statement. The "omnibus" oath is only appropriate to the *ex parte* hearing of summonses. A defendant who appears is entitled to be present at the swearing of the witnesses against him, just as much as at any other part of the proceedings. Consequently, a rate collector, income tax collector or police constable who has taken an oath to cover all his cases in a particular list should always be re-sworn whenever one of the defendants in question actually answers to his summons and enters a plea which necessitates the giving of formal evidence.

Subject to this being done, it does not appear that the practice could be successfully challenged on the ground that it contravened any statute or case law. It is not a matter in which any magistrates' court would wish to take chances, for, if an oath of this kind were invalid, any conviction or order founded on evidence given under it would be a nullity, and presumably no prosecution for perjury would lie if the witness's testimony had been false to his knowledge. It would be interesting to know how many courts administer "omnibus" oaths, and whether any practical or legal difficulties have ever arisen from this procedure.—[A. E. JONES.]

Juvenile courts

The Home Office have issued Circular No. 151/1955, dated September 29, 1955, concerning the appointment of juvenile court panels under the Juvenile Courts (Constitution) Rules, 1954 (S.I. No. 1711; [1955] Crim.L.R. 124), whose period of office begins on November 1. Attention is particularly drawn to the necessity of appointing adequate numbers of justices of both sexes and of members of the panels electing a chairman and as many deputy chairmen as will ensure that each juvenile court sits under the chairmanship of a person so elected. With regard to the age of members of the panel, attention is drawn to the recommendation of the Royal Commission on Justices of the Peace in their report of 1949 that the most suitable age for first appointment to a juvenile court is between 30 and 40 years, and that save in exceptional circumstances no one over the age of 50 should be appointed to such a court for the first time.

Summary Justice

Animals

Fierce dogs. Two bull terriers attacked and killed a corgi dog and then knocked a woman down to get at another dog she was carrying; owner fined £2, ordered to keep terriers under effective control; Drewe-Mercer: Farnham Magistrates' Court (*Evening Standard,* September 22).

Straying. Livestock transporter permitting three bullocks to stray on a busy highway at midnight; fined 15s.; Ellison: Ormskirk County Magistrates' Court (*Liverpool Evening Express,* September 23).

Cruelty. Man, while drunk, throwing stones at kitten and laming it; fined £10, ordered to pay £5 5s. costs; Riley: Swansea Magistrates' Court (*Manchester Guardian,* September 16).

Cruelty. Man stunning dog and putting it down disused shaft, where it lay for eight days before someone heard it whimpering; fined £10, banned from keeping a dog for life; but for family would have been sent to prison; Draper: Nottingham Magistrates' Court (*Manchester Guardian,* September 3).

Assault and disorderly behaviour

Assaulting policeman. Man and youth, aged 16, assaulting policeman; each fined £10, ordered to pay 12s. 6d. costs; Fitzgerald, Rose: Wimbledon Magistrates' Court (*Evening Standard,* September 19).

Signalman turning up for duty an hour late and in an intoxicated state assaulting colleague; fined £5; Dooley: Nottingham Magistrates' Court (*Manchester Guardian,* September 8).

Disorderly behaviour. Five men singing on a bus, making a nuisance of themselves; each fined £2, ordered to pay 7s. 6d. costs; Pinfield, Reynolds, Smith, Underwit, Webb: Aldridge Magistrates' Court (*Birmingham Mail,* October 3).

Giving false alarm. Giving false fire alarm and making false telephone call for an ambulance for the purpose of annoyance; sentenced to one month's imprisonment; O'Sullivan: Birmingham Magistrates' Court (*Birmingham Mail,* September 16).

Aviation

Aiding and abetting a youth under the age of 17 to have sole control of an aircraft in motion; fined £20; Wright: Beaconsfield Magistrates' Court (*Manchester Guardian,* September 21).

Children

Three boys catapulting stones at a railway carriage; each fined £1, ordered to pay 10s. costs: Brentford Juvenile Court (*Evening Standard,* October 3).

Giving a toy to a child under the age of 16 in exchange for rags; fined £5; Johnson: Halesowen Magistrates' Court (*Birmingham Mail,* September 20).

Customs and excise

Evading duty. Spanish seaman attempting to evade duty on 35-litre bottles of spirit; fined £200; Queredo: Thames Magistrates' Court (*Evening Standard,* October 4).

Evading duty. Keeping six watches, valued at £40, on which duty had not been paid; fined £25, ordered to pay £4 4s. costs; Barrett: Lambeth Magistrates' Court (*Evening Standard,* September 16).

Damage

Damaging boot of a car with a blow from a stick; damage estimated at £7 10s.; fined £14 10s; Childs: Dorchester Magistrates' Court (*Liverpool Evening Express,* September 5).

Factories

Smoking in danger area. Worker in an explosives factory taking matches and cigarettes inside a hopper, impregnated with cordite, alongside a room in which women workers were filling cartridges with explosives; sentenced to one month's imprisonment; Matts: Birmingham Magistrates' Court (*Manchester Guardian,* September 10).

Firearms, explosives and offensive weapons

Firearms. Former Regular Army officer possessing and transferring a ·45 revolver to another man without a firearms certificate in force; fined £17, gun ordered to be forfeited; Miller-d'Oyly: West London Magistrates' Court (*Daily Telegraph*, September 13).

Offensive weapon. Soldier in civilian dress carrying an Army issue clasp knife; contended that a soldier is entitled to carry any part of his equipment even when in civilian clothes; fined £10, ordered to pay £1 10s. costs; Pickett: Oxford Magistrates' Court (*Evening Standard*, October 6).

Offensive weapon. Carrying sharpened four-inch nail file; fined £5, ordered to pay £3 0s. 6d. costs; Price: Bognor Magistrates' Court (*Evening Standard*, October 6).

Gaming

Bookmaker's agent. Man, aged 82, using public bar of a public-house for betting; fined £50, ordered to pay £5 costs; Mansfield: West London Magistrates' Court (*Evening Standard*, September 26).

Local by-laws

Markets. Man chaining himself to pillar in fish market and making lightning sketches of visitors for 5s. each; summonses for fixing notice within the harbour limits without the council's permission, being a salesman and selling goods without permission, and for making fast a chain to council property; fined £10; Gurney: Brixham Magistrates' Court (*Manchester Guardian*, September 3).

Litter. Throwing into the street a piece of paper in which fish and chips had been wrapped, and refusing to pick it up when requested to do so by a policeman; fined £3; Beaumont: Leeds Magistrates' Court (*Manchester Guardian*, October 1).

Richmond Park. Boy, aged 16, riding a motor-tricycle in Richmond Park after the park had been closed; fined 10s.: Richmond Juvenile Court (*Evening Standard*, October 5).

Probation

Condition. Youth, aged 18, wandering abroad and lodging in the open; placed on probation, condition of probation being that he should get up when the alarm went off in the morning and lead industrious life; Dench: Wimbledon Magistrates' Court (*Evening Standard*, September 14).

Railways and ships

Making a false statement on a no-passport excursion identity card used to cross the Channel from Eastbourne to Boulogne; fined £50; Gaff: Altrincham Magistrates' Court (*Manchester Guardian*, September 20).

Refusing to leave train after being requested to do so by an authorised person; fined £1; Salamon: Hendon Magistrates' Court (*Evening Standard,* September 22).

Pulling communication cord. Airman pulling communication cord twice when train did not stop at station; pulling cord twice deprived driver of control; fined £1, ordered to pay £1 1s. costs; Ryder: Nottingham Magistrates' Court (*Daily Telegraph,* September 17).

Rivers and waterways

Speeding. Owner navigating vessel at such a speed as to cause damage to other vessels; alleged to have been racing with another boat; fined £10, ordered to pay £5 5s. costs; Hillman: Chertsey Magistrates' Court (*The Times,* September 8).

Fishing without permit. Three men fishing in the Medway without permits; one, who appeared in court, fined 5s.; other two, who did not appear, fined £1 each; Turner, Thorne, Driver: Malling Magistrates' Court (*Evening Standard,* October 3).

Road traffic

Buses. Bus conductor not behaving in a civil or orderly manner in his bus and not taking reasonable precautions to ensure the safety of a passenger; rang the bell while woman getting off the bus, causing her injury; fined £2 on the first charge, £5 on the second, ordered to pay £4 13s. 3d. costs; Johnstone: Chatham Magistrates' Court (*Daily Telegraph,* October 6).

Buses. Conductor failing to take reasonable precautions to ensure the safety of passengers; bus started while woman was alighting, causing her injury; fined £3, ordered to pay £1 3s. costs; Bennett: Birkenhead Magistrates' Court (*Liverpool Evening Express,* September 21).

Buses. Conductor failing to take reasonable precautions for the safety of passengers; rang bell before woman and child safely on bus, child fell off; fined £2; O'Neill: Liverpool City Magistrates' Court (*Liverpool Evening Express,* September 14).

Taxi. Man using his own car plying for hire without a licence and driving a car without insurance cover for taxi work; fined £7, ordered to pay £3 6s. costs, disqualified from driving for twelve months; Brooks: Birmingham Magistrates' Court (*Birmingham Evening Despatch,* September 14).

In charge of a car while under the influence of a drug. Diabetic suffering from an overdose of insulin found in a stationary car; fined £3, ordered to pay £8 8s. costs, disqualified from driving; Wilson: Birmingham Magistrates' Court (*Birmingham Mail,* September 27).

Invalid carriage. Driving invalid carriage while under the influence of drink; fined £5, disqualified from driving for one year; Christie: Edinburgh Sheriff Court (*Liverpool Evening Express*, September 5).

Obstruction, unlighted vehicles. Garage proprietor summoned on twenty charges of obstructing the road with cars and on twenty-one of leaving vehicles unlighted on the road after dark; previously fined £54 on forty-three summonses of a similar nature; fined £72; Bramwell: Watford Magistrates' Court (*Evening Standard*, September 29).

Lorry driver employed by company using a lorry with black smoke coming from the exhaust; driver fined £1, company £3; Hoyle, Fred Hardy & Sons: Huddersfield Magistrates' Court (*Manchester Daily Dispatch*, September 15).

Motor-cycle. Having more than one passenger on a motor-cycle; fined £1; Skinner: Oundle Magistrates' Court (*Kettering Evening Telegraph*, September 30).

Parking on a zebra crossing; fined £3; Bean: Slough Magistrates' Court (*Evening Standard*, September 28).

Failing to stop at a halt line; fined 10s., ordered to pay 13s. 6d. costs; Hall: Grays Magistrates' Court (*Evening Standard*, September 28).

Pony and trap. Driving pony and trap to the common danger and without lights; fined £4; Sherwood: Romford Magistrates' Court (*Evening Standard*, September 13).

Accident. Failing to stop after a road accident and failing to report it; fined £2; Wharncliffe: Sheffield Magistrates' Court (*Manchester Guardian*, September 20).

Case and Comment

Contempt of Court—*Unfair criticism of court*

Re NICOL [1954] 3 D.L.R. 690 (Canada: British Columbia Supreme Court).

G. was convicted of murder and sentenced to death. Two days after the trial a newspaperman wrote an article, in the form of an allegory, criticising capital punishment. In it he made several references to G.'s trial and stated that the execution of the death penalty was in itself murder, for which each member of the community was responsible, including "the twelve people who planned the murder, and the judge who chose the time and the place and caused the victim to suffer the exquisite torture of anticipation." It was alleged that this obviously referred to the jurymen and judge in G.'s trial, and the newspaperman, the publisher and the editor-in-chief of the paper were charged with contempt for publishing remarks calculated to bring the court and the administration of justice into disrepute.

Held, they were guilty of contempt. The article did not constitute fair and proper criticism of the courts; it was calculated to discourage jury service and verdicts of guilty in future cases involving capital punishment, and imputed false motives to the court pronouncing sentence.

Food and Drugs—*Chocolate cigars not of the substance and quality demanded*

SPICER *v.* THE CALL BOY CONFECTIONERY (19 *Journal of Criminal Law* 200).

The defendant company was charged with selling white milk chocolate cigars not of the substance demanded and with selling such chocolate cigars not of the quality demanded contrary to section 3 of the Food and Drugs Act, 1938. The informations were not laid in the alternative and the prosecution asked for conviction on both counts. The defendants were the manufacturers of the chocolate cigars which the analyst stated contained 40 per cent. fat, 35 per cent. sugar and flavouring, 25 per cent. skimmed milk powder and no chocolate.

The magistrates held that the defendants were guilty on both charges. A chocolate cigar which contained no chocolate was not of the substance demanded and a white milk chocolate cigar which was made with skimmed milk powder instead of milk was not of the quality demanded.

Highways—*Allowing lime to flow into highway—limestone dust blown on to highway while lime being spread*

BUMBY *v.* BRAME [1] (Pickering-Lythe East Magistrates' Court: C. H. Bradley, Esq., Chairman: September 15, 1955).

The defendant was charged with unlawfully suffering ground limestone dust to flow into the highway from certain adjacent lands contrary to section 72 of the Highway Act, 1835. A witness for the prosecution gave evidence that he was driving his car when he saw what appeared to be a dense cloud of smoke drifting over the road about 200 yards ahead. He slowed down and drove as though going through a fog; the car was completely enveloped by the cloud and the windscreen was covered with lime dust. He hit something, and on getting out of the car discovered he had collided with a stationary lorry, which was loaded with lime. There was a lime spreader working in a field next to the road, within 20 feet of the hedge, and lime dust was swirling in the air, on the road and on the car. There was a moderate breeze blowing. Other witnesses gave evidence that there was lime dust on the road, but only a negligible amount. It was contended for the defence that ground limestone dust used for lime spreading was not lime within the meaning of section 72, which envisaged lime in the form of quick lime and not agricultural lime, a commodity not then known; the words used in the Act are "flow into," and the section does not relate to lime blowing on to the highway.

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[1] For the defendant: W. D. Pinkney, Solicitor, Bridlington.

Held, the case was not proved; there was not a sufficient density of lime dust to cause the accident. The charge was dismissed.

[J. K. Frankish, *Solicitor*.]

COMMENTARY. The Highways Act, 1835, s. 72, provides:—"If any person . . . shall suffer any filth, dirt, lime, or other offensive matter or thing whatsoever to run or flow into or upon any highway from any . . . lands . . . adjacent thereto . . . [he] shall . . . forfeit and pay any sum not exceeding forty shillings, over and above the damages occasioned thereby."

This case will be of interest to farmers and motorists in country districts, but unfortunately the form of the decision leaves open the question whether the words of the Act cover ground limestone dust blowing on to the highway.

Homicide—*Mistake—excusable homicide—killing while under influence of nightmare*

R. *v.* DHLAMINI, 1955 (1) S.A.L.R. 120 (South Africa: Supreme Court, Transvaal Provincial Division).

The accused was charged with murder. On the night in question he was in a room which he occupied with several others, each of whom used to sleep on a mat on the floor. One of the others went towards where the accused was and stooped down to pick up a mat.

At that moment the accused lunged at him three times with a knife and inflicted wounds one of which was fatal. Then the accused rushed out of the room and disappeared. In his defence he said that he had a vague recollection of having seen faces looking at him through a window, and he dreamed that he was being assaulted by a number of people and that he was defending himself. The accused had no motive for killing the deceased.

Held, the accused was not guilty. The court was not satisfied that the accused knew what he was doing when he killed the deceased; it seemed probable that he did not know what he was doing and did not intend to act as he did. He had half-awoken from a nightmare and acted involuntarily without intention or motive. Nor was there any ground for finding the accused guilty of culpable homicide.

COMMENTARY. There appears to be no English case which is identical to this one; but in *H.M. Advocate* v. *Fraser* (1878) 4 Couper 70, the defendant killed his child during sleep thinking he was struggling with a wild tiger and was found not guilty of any crime.

This case illustrates the principle that a person acting under an honest and reasonable belief in a state of things which if true would have justified the act done is excused from liability for that act. See further Archbold, 33rd ed., 23; Glanville Williams, *Criminal Law—The General Part,* §§ 42 *et seq.*; Russell on *Crime*, 10th ed., 72.

Jury—*Verdict—reconsideration of verdict—second verdict inconsistent with first*

R. *v.* BRANSGROVE [1954] N.Z.L.R. 1076 (New Zealand: Court of Appeal).

The appellant was indicted for murder. The jury first purported to return a verdict of "guilty whilst temporarily of unsound mind." The judge asked whether the verdict was to be understood as conveying a finding of insanity within the terms of the law. The foreman replied: "Not that he was insane at the time of the act but that he was not in the possession of the whole of his faculties." There was some further discussion and then the foreman asked that the jury be allowed to retire to reconsider the verdict. Before they did so the judge asked: "I understand the . . . verdict to be that it certainly negatives murder . . . is that it?" The foreman replied: "Yes." The jury retired and then returned a verdict of murder. The appellant contended that the two verdicts were inconsistent, and that all the jury could consider when it retired a second time were the questions of manslaughter and insanity.

Held, the verdict of the jury was the final one returned; when they retired the second time the jury were in no way limited by what had gone before, and the nature of the verdict it was open to them to return was as unrestricted as though no verdict had been ostensibly returned at all.

COMMENTARY. One of the contentions for the defence was that the foreman's reply to the judge's question binds the jury when it is said in the presence of the jury, even before retirement. The court did not admit this and followed the principles clearly stated in Archbold (33rd ed., 211–2) that the judge need not accept the first verdict returned, and the verdict which the jury ultimately return is the verdict to be recorded.

Legal Aid—*False statement on application for legal aid*

THE LAW SOCIETY *v.* MOORE [2] (Nottingham Magistrates' Court: C. Coffey, Esq., Chairman: September 21, 1955).

The defendant was charged under section 15 of the Legal Aid and Advice Act, 1949, with having made a false statement on a form applying for legal aid in an action for divorce. She elected summary trial and pleaded guilty. It was stated for the prosecution that the defendant, in a form completed by her for the purposes of the Act, asked for discretion in respect of her adultery. The committee considering her application granted a legal aid certificate and she was assessed to pay £35 10s.; public funds bore the balance of the cost, namely, £20. Later in a discretion statement, the defendant informed her solicitor that adultery had taken place more recently, and finally confessed to having committed adultery during 1954. Had the committee which considered her application known of the real circumstances of the case when it was first before them, they would not have granted a legal aid certificate. For the defendant it was said that she had realised after completing the form that she had not disclosed everything, and made up her mind to do so, but was interviewed by a young clerk in the office of her solicitors and felt embarrassed and could not tell him all the details. Later she made up her mind to confess the true position to the senior partner of the firm, but being pregnant her nerve again failed her. She had already suffered a penalty of £35 10s., because her petition was dismissed, and she could not now marry the man with whom she was living and who was the father of her child.

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[2] For the Nottinghamshire Law Society: F. B. Pearce, Solicitor, Nottingham. For the defendant: H. L. J. Massey, Solicitor, Nottingham.

Held, that the defendant should be fined £5 and should pay £2 12s. 6d. costs. The magistrates took a most serious view of the case, but in view of the considerable suffering already undergone by the defendant they did not consider a heavier fine suitable in the circumstances.

[M. Smallwood, *Deputy Clerk to the Justices.*]

Magistrates—*Jurisdiction—binding over to be of good behaviour*

MACKENZIE *v*. MARTIN [1954] 3 D.L.R. 417 (Canada: Supreme Court).

The appellant was separated from his wife. In a complaint to the magistrate the wife alleged that the appellant had constantly called her, her employers and other persons on the telephone causing them annoyance and inconvenience. The magistrate ordered the appellant to find two sureties to be answerable for his good behaviour, and on his default committed him to prison for six months. The appellant sued the magistrate for false imprisonment. The action was dismissed. On appeal to the Supreme Court:—

Held (Rand J. dissenting), dismissing the appeal, that the magistrate had acted within his jurisdiction. His jurisdiction was that accorded by the common law of England to a justice of the peace, and included a general power to administer preventive justice; the decision to bind over the appellant in this case was within the magistrate's jurisdiction even though no actual breach of the peace was apprehended.

Per Rand J.: What the acts did was to annoy, but annoyance of the nature and in the circumstances here is beyond any range of conduct touching peace, order or morality. . . . Neither the information nor the evidence was sufficient to give jurisdiction to the magistrate on either the ground of threatened breach of the peace or for good behaviour. To say that the general jurisdiction to enter upon the hearing was present is to disregard both those facts.

COMMENTARY. Blackstone states that the justices are empowered by the Statute 34 Edw. 3, c. 1, to bind a man over to his good behaviour "for causes of scandal, *contra bonos mores*, as well as *contra pacem*" (iv Bl.Comm. 256). This case is interesting because it explores this jurisdiction in a way which would not be possible in England. In Canada the conduct complained of is, apparently, not a criminal offence whereas in England it appears to be an offence under the Post Office Act, 1953, s. 66, and would clearly fall within the principle in *R*. v. *Sandbach, ex p. Williams* [1935] 2 K.B. 192 (street bookmaker's scout obstructing a police constable in the execution of his duty by giving warning of the approach of the police held liable to be bound over although there was no actual or apprehended breach of the peace).

See further [1955] Crim.L.R. 484, an article which deals with certain other aspects of this matter, and Stone (87th ed., p. 295).

Perjury—*False statement—divorced man described as bachelor*

R. *v.* PETERS [3] (County of London Sessions: A. W. Cockburn, Esq., Q.C., Chairman: August 23, 1955).

The defendant was charged under section 3 (1) (*b*) of the Perjury Act, 1911, with " knowingly and wilfully causing to be made, for the purpose of being inserted in a marriage register a false statement, namely, that he had not previously been married." The defendant was divorced by his first wife in 1949. In 1954 he became engaged to the widowed Mrs. L. and a licence was granted for their marriage in a church in the West End of London. Evidence was given by the vicar of that church, who saw P. on the evening of the day before the marriage, that in order to obtain the information that he was obliged by the Marriage Act, 1949, to enter in his marriage register, including that entered in the column headed " Condition," the vicar had asked P. among other questions, whether P. had ever been married before, to which P. replied: " No." The vicar thereupon made an entry in the register describing P.'s " condition " as " Bachelor." On consulting the dictionary the chairman found that " a bachelor " was defined as " an unmarried man."

Held, that according to the wording of the indictment the false statement which P. caused to be made was the entry of the word " Bachelor " in the marriage register. As a divorced man P. was an unmarried man. Therefore it was not incorrect to describe him as a bachelor, and the entry which he caused to be made in the register was not a false one.

The jury was directed to return a verdict of Not Guilty.

[C. P. C. Whelon, *Barrister-at-Law.*]

Road Traffic—*Accident—failure to notify—accident to person's own vehicle*

TUCKER *v.* MACKENZIE (High Court of Justiciary, 1955 S.L.T. 367).

The accused's van, while being driven by him, collided with a wooden fence knocking it down; the car was damaged. The accused did not give his name and address to anyone having reasonable grounds for requiring him to do so, and did not report the accident to the police. He was charged under section 22 of the Road Traffic Act, 1930, and after his objection to the relevancy of the complaint had been overruled, he pleaded guilty. On appeal against the overruling of his objection, the accused contended that section 22 does not apply where a person's own vehicle is damaged in an accident.

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[3] For the prosecution: *S. A. Morton* (instructed by the Director of Public Prosecutions). For the defendant: *F. E. H. Gibbens* (instructed by Freke, Palmer, Romain and Romain).

Held (Lord Carmont dissenting), dismissing the appeal, that whilst damage to the fence was irrelevant, section 22 applied where there was damage to any vehicle, not merely damage to a vehicle other than the accused's own.

COMMENTARY. The Road Traffic Act, 1930, s. 22, provides that "(1) If in any case, owing to the presence of a motor vehicle on a road, an accident occurs whereby damage or injury is caused to any person, vehicle or animal, the driver of the motor vehicle shall stop and, if required so to do" give his name and address to a proper person or report the accident to the police.

The court followed the English decision in *Pagett* v. *Mayo* [1939] 2 K.B. 94, that damage to a wall was not damage or injury to a person within the section as the Act was not designed to cover damage to the property of any person.

As Lord Carmont, dissenting, pointed out, this decision would seem to involve every person having an accident to his own vehicle going to the police station merely to report some trifling injury to his own vehicle.

Road Traffic—*Driving licences—provisional licence-holder driving unaccompanied—three-wheeled vehicle*

POLICE *v.* TILL [4] (Hendon Magistrates' Court: W. R. Clemens, Esq., Chairman: August 18, 1955).

The defendant, a provisional licence-holder, was charged with contravening regulation 16 of the Motor Vehicles (Driving Licences) Regulations, 1950, by driving on a road a motor vehicle constructed or adapted to carry more than one passenger, when not accompanied by a properly licensed driver as a supervisor. The evidence for the prosecution showed that the defendant had been seen driving his Bond Minitruck, a small three-wheeled vehicle resembling in many respects the Bond Minicar; he was unaccompanied. The police stopped him and then noticed that there was no seat on the nearside of his vehicle. The defendant was alleged to have said that he had removed the cushions from that seat. It was agreed by the prosecution that this vehicle was registered as a motor-cycle and was of less weight than 8 cwt. The defendant stated that the vehicle was in the same condition as when he bought it four months previously; that there was no passenger seat fitted when he bought it, and that he had carried out no modifications on it himself. Moreover, he called as a witness a director of the firm from whom he had obtained it, who told the court that when it was originally supplied through his firm only one seat—that of the driver—was fitted to the vehicle. It had been returned to them just prior to its sale to the defendant and he had then noticed that the previous owner had adapted the vehicle by the addition of a metal backrest so that cushions could be placed in the nearside position to create a passenger seat. He had not thought that this altered the vehicle into a vehicle constructed or adapted to carry more than one person, and admitted having advised the defendant that as a provisional licence-holder he would not require a person supervising him whilst driving it. The defendant further admitted that he had undergone a little instruction on this vehicle, and when so doing had used cushions on the nearside for his instructor to sit on. The Bench were invited to view the vehicle.

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[4] For the prosecution: *John Clay* (instructed by the Solicitor, Metropolitan Police). For the defence: R. Lucas, Solicitor.

Held, the defendant had committed an offence, but that he had been unintentionally misled; in the circumstances it was ordered that he be absolutely discharged on payment of costs.

[P. D. Fanner, *Deputy Clerk to the Justices.*]

Road Traffic—*Driving uninsured vehicle—motor-assisted pedal cycle—whether a mechanically propelled vehicle*

POLICE *v.* WRIGHT[5] (Chesterfield Borough Magistrates' Court: Harold Shentall, Esq., Chairman: September 12, 1955).

The defendant pleaded not guilty to using a motor-assisted pedal cycle without a certificate of insurance contrary to section 35 (1) of the Road Traffic Act, 1930. While using the cycle as a pedal cycle the defendant had had a slight accident not involving any other person or vehicle but, as he said, owing to the state of the road, and when he was asked to produce his insurance certificate he was unable to do so. Giving evidence, he said that he had not been able to use the cycle as a motor-assisted cycle for a long time; that he had written to the firm concerned complaining of the defects in the machine more than once and had not received any satisfaction.

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[5] The defendant was not represented.

Held, the auxiliary motor was not in working condition at the material time and the defendant was riding the cycle simply as a pedal cycle. The summons was dismissed.

[Charles Proctor, *Clerk to the Justices*]

COMMENTARY. It was decided in *Lawrence* v. *Howlett* [1952] 2 All E.R. 74 that an auto pedal cycle with vital parts removed so that it could only be used as a pedal cycle is not " mechanically propelled " within section 1 of the Road Traffic Act, 1930. Of this case it was said in the Divisional Court that it had given the court " a great deal of trouble "; it was a case which must not be taken to be in any way extended beyond its particular facts (see *Floyd* v. *Bush* [1953] 1 W.L.R. 242 at p. 244). *Lawrence* v. *Howlett* was distinguished in *Floyd* v. *Bush* on the ground that in that case the motor of the cycle whilst not in use at the time when the defendant was stopped was in fact capable of being used.

The magistrates' decision here accepted the defendant's evidence that the motor was not in working condition because of the defects and therefore fell within the decision in *Lawrence* v. *Howlett* without extending that case.

Road Traffic—*Meaning of " road "—court-yard*

HENDERSON *v.* BERNARD, 1955 S.L.T.(Sh.Ct.) 27 (Sheriff Court).

The accused reversed his lorry in a court-yard and collided with a car parked there. He was charged with driving without due care and attention, contrary to section 12 (1) of the Road Traffic Act, 1930. The court-yard had a narrow and difficult entrance from the public highway at one end, and at the other opened out on to a narrow lane and so on to the main thoroughfare. It was used by vehicles making deliveries to premises adjoining the court-yard. It was unmetalled and unpaved, and part at least was used as a drying green. No evidence was given of vehicles passing through the yard from one opening to the other, and the general practice was for vehicles to enter and leave by the lane. The public had access to the court-yard.

Held, following *Thomas* v. *Dando* [1951] 2 K.B. 620, that the court-yard was not a " road " within the meaning of the Road Traffic Act, 1930; two separate means of entrance and exit are not sufficient to turn a court-yard into a road; the accused could not be convicted under section 12.

COMMENTARY. In *Thomas* v. *Dando*, an unpaved forecourt between a shop and the pavement of a public highway used by the public to reach shops adjoining it was held not to be a road. *Bugge* v. *Taylor* [1941] 1 K.B. 198 was distinguished in *Thomas* v. *Dando* and *Henderson* v. *Bernard* above, on the ground that there was evidence on which the justices could find that a hotel forecourt was a road but the case did not decide that a place was a public highway merely because it was not separated from the public highway by a wall or rail.

Trial—*Verdict—reconsideration of verdict by jury.* See R. *v.* BRANSGROVE, p. 709, above.

Vagrancy—"*Frequenting*"—*meaning of*

GOUNDRY *v.* THE POLICE [1954] N.Z.L.R. 692 (New Zealand: Supreme Court).

The appellant was charged with frequenting a public place with felonious intent. He had a bad record of indecent assaults on males. On the occasion in question he had stopped a boy in the street with the ostensible purpose of asking the way, had got into conversation with him and had arranged to meet him the following Saturday. He was convicted. On appeal, it was submitted that it had not been established that the accused had "frequented" the street.

Held, dismissing the appeal, that when the accused stopped the boy and used that opportunity to gain his confidence and make the appointment with him, he was "frequenting" the street.

COMMENTARY. North J. regarded himself as bound by a previous New Zealand case, *R.* v. *Child* [1935] N.Z.L.R. 186, in which *Airton* v. *Scott* (1909) 25 T.L.R. 250, was cited with approval. In that case it was held that "being long enough on the premises to effect the particular object aimed at" was frequenting within section 4 of the Vagrancy Act, 1824.

Wireless Telegraphy—*Using wireless set without a licence—disconnected set*

POSTMASTER-GENERAL *v.* SEAGER [6] (Harrow Magistrates' Court: R. M. J. Pendred, Esq., Chairman: August 9, 1955).

The defendant was charged with using an apparatus for wireless telegraphy without a licence. The evidence for the prosecution showed that the defendant had a wireless set standing on a bureau in his house which was in working order, but which was not plugged in to the electricity supply, and the mains connection of which was coiled up at the back of the set. The prosecution contended that the " use " of the wireless set should be assumed if it was proved that it was installed in the defendant's house and was in working order. The defendant said, that while he admitted that the set had been used in the past, it had not been used at all during the two years that he and his family had lived in their present home. It was a large house which he shared with another family, and because of the distance between the sitting-room and the bedroom occupied by their children it would be impracticable to use the wireless in the evening; his wife had no available time during the day. The wire to connect the set to the mains was tied up and placed at the back of the set in order to keep it out of the reach of the children, and the set occupied the place it did simply for somewhere to keep it.

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[6] For the Postmaster-General: R. J. Harris, Solicitor. The defendant was not represented.

The justices accepted the evidence of the defendant and dismissed the case against him.

COMMENTARY. The relevant section is section 1 (1) of the Wireless Telegraphy Act, 1949, which states that: " No person shall . . . instal or use any apparatus for wireless telegraphy except under the authority of a licence." No definition is given of the word " use " in the Act nor do there appear to be any authorities to support the contention of the prosecution in this case. The appropriate definition in the dictionary is " To make use of as a means or instrument: to employ for a certain end or purpose " (O.E.D.).

[P. D. Fanner, *Deputy Clerk to the Justices*.]

Acts and Orders

Agriculture

See TUBERCULOSIS (AREA ERADICATION) AMENDMENT ORDER, below; TUBERCULOSIS (ATTESTED AREA) ORDERS, below; IMPORTATION OF PLANTS (AMENDMENT) ORDER, p. 720, below.

Animals

IMPORTATION OF ANIMAL SEMEN ORDER, 1955 (S.I. No. 1390): operative September 17, 1955. The importation into Great Britain of the semen of canine and feline animals, swine, sheep, goats, and all other ruminating animals except cattle, and of domestic fowls, turkeys, geese, ducks, guinea fowls, pigeons, pheasants and partridges is prohibited except under a licence of the Minister of Agriculture, Fisheries and Food granted for any purpose approved by him.

Where it is shown to the satisfaction of the Commissioners of Customs and Excise that any semen has been imported solely for the purposes of transhipment, the Commissioners may allow it to be landed without licence subject to such conditions as they think fit.

For penalties for contraventions see sections 78, 79 and 82 of the Diseases of Animals Act, 1950.

TUBERCULOSIS (AREA ERADICATION) AMENDMENT ORDER, 1955 (S.I. No. 1449): operative October 1, 1955. Bovine animals may be moved without a licence into an attested area out of an adjoining attested area by a route wholly within those two areas.

TUBERCULOSIS (ATTESTED AREA) ORDERS, 1955, SOUTH-WEST AND MID-WALES (S.I. No. 1450); NORTH-WEST ENGLAND (S.I. No. 1451): both operative October 1, 1955. The areas defined in the Schedules to the Orders, parts of which were previously declared to be eradication areas, are now declared to be attested areas. Previous orders relating to these areas, S.I.s 1954, No. 763, and 1955, Nos. 285, 287 ([1955] Crim.L.R. 257) are revoked. The areas are still subject to the Tuberculosis (Area Eradication) Order, 1950 (S.I. No. 2006).

See TUBERCULOSIS (ARGYLL AND HEBRIDES, CENTRAL, FORTH AND SOUTH-WEST SCOTLAND ATTESTED AREA) ORDER, p. 720, below.

Food and Drugs

MILK MARKETING BOARD (MODIFICATION OF FUNCTIONS) (REVOCATION) ORDER, 1955 (S.I. No. 1477): operative October 1, 1955. The Orders of 1940 (S.R. & O. No. 1716), 1942 (S.R. & O. No. 2539), 1948 (S.I. No. 829) and 1950 (S.I. No. 1063), which modified the functions and powers of the Milk Marketing Board under the Milk Marketing Scheme, 1933, are revoked, but without prejudice to any proceedings in respect of contraventions of their provisions.

WELFARE FOODS (AMENDMENT) ORDERS, 1955, GREAT BRITAIN (S.I. No. 1369); NORTHERN IRELAND (S.I. No. 1370): both operative September 25, 1955. The Orders of 1954 (S.I. Nos. 1401, 1402; [1954] Crim.L.R. 947) are amended. The time restriction on the use of milk tokens by persons supplying milk in certain circumstances to beneficiaries absent from their usual place of residence is removed; the validity of a token for welfare milk (F.W.1) is extended from two to five weeks when used to obtain liquid milk.

London

The following Orders have been made detailing prescribed routes: S.I. 1955, Nos. 1446 (City of London); 1447 (East Ham); 1448 (Hackney).

Magistrates' Courts

The following Order has been made altering petty sessional divisions: S.I. 1955, No. 1374 (Staffordshire).

See JUSTICES' CLERKS AND ASSISTANTS (SUPERANNUATION) REGULATIONS, p. 720, below.

Northern Ireland

See WELFARE FOODS (NORTHERN IRELAND) (AMENDMENT) ORDER, 1955, above.

Official Secrets

OFFICIAL SECRETS ORDERS, 1955, CYPRUS (S.I. No. 1410); PROHIBITED PLACE (S.I. No. 1497): both operative October 1, 1955. The offices of the Joint Headquarters situated at Episkopi in the Civil District of Limassol, Cyprus, and the works and offices of the United Kingdom Atomic Energy Authority at Dounreay, Caithness, are declared prohibited places for the purposes of the Official Secrets Act, 1911.

Pensions

JUSTICES' CLERKS AND ASSISTANTS (SUPERANNUATION) REGULATIONS, 1955, LONDON (S.I. No. 1495); MANCHESTER (S.I. No. 1496): both operative October 1, 1955. The local Act superannuation schemes administered by the London County Council and the Manchester Corporation are modified for justices' clerks and their staffs paid by the council or corporation.

Pest Control

IMPORTATION OF PLANTS (AMENDMENT) ORDER, 1955 (S.I. No. 851): operative June 16, 1955. The importation of cherries from Northern Italy, Southern France, Austria, Bulgaria, Hungary and Yugoslavia was permitted until July 1, 1955, and not only until June 15, as prescribed in the Order of 1955 (S.I. No. 81; [1955] Crim.L.R. 196).

Scotland

Animals

TUBERCULOSIS (ARGYLL AND HEBRIDES, CENTRAL, FORTH AND SOUTH-WEST SCOTLAND ATTESTED AREA) ORDER, 1955 (S.I. No. 1445): operative October 1, 1955. The area defined in the Schedule to the Order, which was previously divided into attested and eradication areas, is now declared an attested area. Previous orders relating to the area, S.I.s 1954, No. 764, and 1955, Nos. 284, 286 ([1955] Crim.L.R. 257), are revoked. The area is subject to the Tuberculosis (Area Eradication) Order, 1950 (S.I. No. 2006).

Salmon and Freshwater Fisheries

DISTRICT OF THE RIVER CONON (ANNUAL CLOSE TIME) ORDER, 1955 (S.I. No. 1403): operative August 26, 1955. The annual close time for salmon fishing in the district extends from August 27 until February 10, both days inclusive. Salmon may be taken with rod and line during this period from August 27 until September 30 and from January 26 until February 10.

For penalties for contraventions, see section 15 of the Salmon Fisheries (Scotland) Act, 1868.

Letters to the Editor

Tenure of Colonial Judges

Sir

Mr. Shaw's letter, published in your September issue, calls for comment not only on account of its inaccuracies but, what is worse, because of its very unfair implications.

To start with inaccuracies: your correspondent, referring to the judges of Malta, states that although he is pleased to learn that they enjoy a greater measure of security than in some other colonies, still such security is only partial as compared with the position in the United Kingdom, and, in support of his statement, he makes two points, that is—(a) in England a superior judge can only be removed by Her Majesty following an address by both Houses of Parliament, and (b) the salaries of the judges in England are not dependent on the annual vote of a particular Parliament but are a charge on the Consolidated Fund—thereby implying that no parallel guarantee exists with regard to the Malta judges. Mr. Shaw asks: "Who is to be the judge of proved misbehaviour or incapacity?"

One should, I think, refrain from writing about specific cases without first making inquiries, so as not to mislead your readers. Had Mr. Shaw done so, he would have found out that according to an express provision of the Malta Constitution Letters Patent, 1947, no judge can be removed from office except by the Governor in Council on an address from the Legislative Assembly praying for such removal on the ground of proved misbehaviour or incapacity. Only the Legislative Assembly is mentioned because there is no second chamber in Malta. With regard to the salary, the amount of this is expressly fixed in the Letters Patent, and it is therein provided that the salary of a judge shall not be reduced during his tenure of office. Thus the Maltese judges enjoy security of tenure on a par with the judges in England.

Your correspondent may perhaps wonder why Maltese judges enjoy this complete security of tenure, whereas some other colonial judges do not. The reasons, perhaps, are not far to seek. Apart from the unceasing vigilance of the Maltese judges that their status be not impaired in any way, there are certain differences between them and the other colonial judges. The following may help Mr. Shaw: (1) By proclamation No. VI of 1814 (Ch. 1 Rev. Edit. Laws of Malta), the judges in Malta are styled "Her Majesty's Judges," and by another official enactment they are to be addressed as "My Lord" when in court. (2) The judges in Malta are all Maltese by birth. They are appointed for Malta until death or retirement, and cannot be transferred elsewhere. (3) A Maltese judiciary of a very high standard existed already in Malta long before the British connection. (4) The legal system, and the administration of justice in Malta, were very advanced long before Malta, of her own accord, and not through conquest or settlement, became a part of the British Empire.

I would refer Mr. Shaw to the two articles appearing in the Malta Year Books for 1954 and 1955, entitled respectively "The Bench in Malta" (p. 48), and "The Law in Malta" (p. 207).

It may be also interesting to note that the appellation *puisne* judges, used by Mr. Shaw in referring to the Maltese judges, is incorrect. The judges in Malta are in no way subordinate to the Chief Justice (*vide* Command Paper 62801, presented to both Houses of Parliament, p. 215), who is simply *primus inter pares*. In view of the fact that the original meaning of the word "puisne" was "junior" or "inferior" (*vide* Wharton's *Law Lexicon*), the Maltese judges have always felt that the addition of the word "puisne" might, in their case, imply some sort of inferiority to the Chief Justice, and in all constitutional enactments, sent out from England, referring to Malta, the word was never used. In the 1947 Letters Patent, through some oversight, the word was added. The judges protested to the Secretary of State for the Colonies, who upheld their contention, and the word "puisne" was ordered to be deleted by other Letters Patent.

The (to say the very least) most amazing part of Mr. Shaw's letter is where he lightly states that colonial judges and magistrates might be biased in cases where the Governor of the colony is concerned. *En passant*, perhaps it would have been more correct to say "Government" instead of "Governor," because, so far as criminal proceedings are concerned, a colonial Governor is by statute exempt from criminal action, and, so far as civil proceedings are concerned, it is the Government of the day which is sued and not the Governor, at least in colonies where a measure of self-government is enjoyed. Mr. Shaw must have indeed a very poor idea of the sense of justice, indeed of the conscientiousness of colonial judges and magistrates, to entertain the notion that they might be swayed by the sordid considerations which he shockingly mentions. With regard to Malta, I would assure him that no Maltese judge or magistrate has ever hesitated a single instant, or deviated by one iota from the path of justice, whether the defendant was a chimney-sweep or the Governor or the Czar of all the Russias. If Mr. Shaw were to come to Malta I could show him a quite imposing list of judgments in which our courts decided against the Government, without fear or favour. Your correspondent uses the word "strong-minded" to indicate an occupant of the Bench who would perhaps be capable of overcoming the factors which he mentions. May I suggest that the word "conscientious" be substituted, at least in the case of the Maltese judges. No "conscientious" judge or magistrate ever cared a rap for the factors which Mr. Shaw so surprisingly thinks would possibly warp his judgment.

Mr. Shaw's experience must indeed have been a very unhappy one, as otherwise I am sure he would not have dreamt of making such offensive insinuations.

Yours faithfully,

WILLIAM HARDING,

One of Her Majesty's Judges in Malta.

Sliema, Malta, G.C.

Books and Periodicals

Reviews:

The Law of Road Traffic. By M. R. R. Davies, PH.D.(Cantab), LL.M.(Leeds), D.P.A.(Lond.). London: Shaw & Sons, Ltd. 1954. xlviii and 328 and (index) 20 pp. (30s. net.)

This book deals with all aspects of road traffic, both civil and criminal, from the point of view of the driver, the owner, the cyclist, the pedestrian, and even the spectator at a motor racing event. For those who may have to advise, either from the criminal standpoint or the civil, the man who has lent his car to an employee who is later involved with his passengers in an accident, or the son who has driven negligently in the presence of his father's chauffeur, or many other of the less usual combinations and permutations that arise under the present law of road traffic, this book will provide invaluable assistance. The legislation that deals with motoring, and the litigation that ensues, grows day by day in size and complexity.

Into 320 readable pages Dr. Davies has compressed the answers to a great number of the questions that could be asked on this subject.

The style and layout are clear and simple; the index and annotation copious but not overwhelming, with the result that the practitioner, whose need is to find a speedy solution to his problem together with clear and accurate synopses of the important cases, will find this book invaluable.

So will those many laymen who come into sufficient contact (literally or otherwise) with second-hand cars or parking laws, to warrant their investing in what may well become the standard work upon the law of road traffic.

The Construction and Use Regulations are clearly and fully set out with useful footnotes. All aspects of licensing of vehicles are dealt with, and in Chapter 4 the author in some 50 pages has covered, with sufficient details of a large number of the relevant authorities, "the nature and extent of a driver's criminal liability for specific driving offences and in cases of manslaughter."

Part III of the book deals with the common law generally, including car auctions, conditions and warranties, garages and repairs, motor vehicle accessories, the law in running-down cases, animals upon the highway and an excellent direction as to assessment of damages.

Finally, Part IV deals exclusively with insurance, including a timely reminder about the Motor Insurers' Bureau.

MICHAEL HAVERS.

The Psychology of the Criminal Act and Punishment. By Gregory Zilboorg, M.D. London: The Hogarth Press and the Institute of Psycho-Analysis. 1955. ix and 145 and (index) 5 pp. (10s. 6d. net.)

This book is based in outline upon a series of lectures given by Dr. Zilboorg at Yale University as the Isaac Ray Lecturer under the joint auspices of the Schools of Law and Medicine. The purpose of these lectures is to bring about a closer co-operation between the psychiatrist and the lawyer. This then is the underlying motif of the study; but primarily the author is concerned with the psychology of the criminal act and with the system of justice which responds to this act with formal, legal punishment. The circumstances under which the lectures were given are both an advantage and a disadvantage. The advantage lies in the simplicity of approach necessarily required for a mixed audience; the disadvantage is that the writer is tempted, at least in the opening chapters, to talk a little loosely. For example, he speaks of justice and morality (see especially p. 9), terms which the lawyer, in England at least, avoids except to denote an ideal owing to their inevitable variation in meaning in each succeeding decade. This variation in accepted patterns and standards should be a warning to anyone who refers to cases and books of other generations to support an argument.

It is apparent that the writer is a person of considerable understanding and wisdom. This is made clear in the last two chapters on " Some Further Aspects of Punishment " and " Some Suggestions about Psychiatry and Psychiatrists." Here the main thesis is the need to introduce purely psychological norms into the trial and treatment of a criminal in the place of legal ones. The contribution which psychiatry can make is well illustrated earlier in the book by the discussion on the McNaghten rules (pp. 15 *et seq.*).

In the chapter discussing aggression and transgression the point is brought out that " there seems to be as yet no satisfactory explanation of why certain individuals start ' acting out ' their fantasy life, either in the form of annoying neurotic social behaviour or in the form of criminal acts " (p. 55). The suggestion is made that the law court should be less a field of combat and that criminal law students should be introduced during their studies to prison administration, should attend executions and take case histories of prisoners in much the same way as medical students in their particular field. In our present unenlightened state it does indeed seem true that there are two common ways of approaching the criminal, either to " hurl ourselves upon him with all the power of our aggressive, punitive, destructive hostility; or we can assume the criminal to be a mentally sick man and can then assume a more tolerant, more charitable attitude towards the doer if not the deed " (p. 84).

Dr. Zilboorg does not unduly weight the scales in favour of the psychiatrist, for he mentions (especially at pp. 120–1) the problem of his adequate qualification for court work, and laments that " the old tradition that any M.D. after a certain number of years could become a psychiatric expert witness stands legally unchallenged and professionally unconquered." This should be a salutary warning to the untrained well-wishers who see in psychiatry the palliative for all ills connected with delinquency. The lay public, including the lawyers, really do not know what qualification should be required before weight is given to an expert " psychiatric " opinion. Indeed, the criminal law court as a field of combat is the one defence the lawyer and the public have; there opinions can be winnowed and, of course, there is nothing to prevent a court of law becoming the battlefield of medical experts. This is a defect that only the psychiatrists can remedy.

Perhaps the main theme of the book may be questioned, namely, to bring about a closer co-operation between the lawyer and the psychiatrist. Clearly, co-operation in the sense of mutual respect is desirable and today tends to be lacking. The day may be near, however, when the psychiatrist and the lawyer agree to differ and accept the very different methods of thinking which each discipline engenders. The criminal lawyer is concerned primarily with the protection of the public and that every person fit to plead shall have a fair trial; the psychiatrist is concerned with the individual criminal. These are parallels which do not meet and are not merely distortions of perspective (p. viii). Indeed, it may well be argued that the conflict between the lawyer and the psychiatrist is healthy, compelling the rigidity of the one, which is today concerned primarily with the deed, to accept modifications at many points, and the frequent over-sentimentality of the other to be stiffened by the same process. Dr. Zilboorg is not of this opinion but hopes for a solution of the conflict between law and psychiatry which he views as a clogging influence on even the smoothest machinery of justice (p. 14). At present, the injection of " psychiatric " evidence and terms into criminal cases proceeds apace. This is certainly to the good; but the too frequent use of psychiatric phrases by the lawyer such as the defence, supported by an expert medical witness, that the accused was suffering from a split mind, is likely to do more harm than good to the cause of psychiatry.

T. E. JAMES.

Homosexuality. By D. J. West, M.B., D.P.M. London: Gerald Duckworth & Co., Ltd. 1955. xiii and 128 and (list of references) 9 and (index) 5 pp. (15s. net.)

Dr. West writes as a psychiatrist with psychoanalytic interest. His plea is for a tolerant and unbiased approach to the problem of homosexuality. If criticism of his method is to be made it would lie in the fact that he sits too much upon the fence, committing himself to no particular method of approach but considering many. It is suggested that if causes cannot be found, the field is open for a discussion of precipitating factors. For example, he frequently refers to Freud's work and statements but discreetly withdraws before their full implication is grasped. This method must not be confused with the attempt to be " objective " which is too often met with in learned studies today, but it is rather a wish to present all current points of view. On one fact the author is quite clear: the penalty for homosexual acts between consenting adults should be removed.

The lawyer will find of particular interest the chapters on the " Legal and Social Problem " and on " Prevention." Also, the very fair consideration of the glands, heredity and psychological causes help to clear the mind of many preliminary obstructions. The reference to history and the attitude to homosexuality among primitive peoples and in historic times makes the point that the problem is and was ever present. It is perhaps questionable, however, once this fact is openly accepted, whether the references to other countries with less restrictive laws in this respect are of help. The problem must surely be a social one and there are many, including psychiatrists and orthodox psychoanalysts, who would vouch for the fact that in England the law has turned many away from this practice and has stimulated a desire for treatment. Apart from conventional lip-service it is doubtful whether "given a simple choice, no one in his right mind would choose to be homosexual" (p. 108). It must now be generally accepted that imprisonment of the adult by way of treatment is futile, but general deterrence by the penalty is the real problem. The unflagging energies of the convinced homosexual to induce others to join the circle cannot be overlooked. The author, of course, sees all these various problems and discusses them in their contexts. Undoubtedly, "if the police were to track down and prosecute all transgressors, there would be utter chaos" (p. 123). It has long seemed that the humane exercise of their discretion by the police is the one safeguard against the admitted over-severity of the written law.

The fear of homosexuality is considerable and so the argument is advanced that freedom would lead to social decadence. Dr. West makes it clear that this fear must be faced in pursuance of an unbiased approach to the subject. Wishing to be tolerant, it is now becoming fashionable to express the view that only homosexual relations with persons under a certain age should be penalised. The author discusses the age that should be selected. Is it possible for some to have their masculinity emphasised by sentence to a detention centre if below 21 years of age? Or is there any other less severe method which society could devise, apart from psychiatric or psychoanalytic treatment? Or is it no concern of ours how men, over, for example, 16 years of age, satisfy their sexual urges? These are questions which, with the exception of the latter, are not discussed but which certainly agitate the minds of those working in the Children's Department of the Home Office and on the Prison Commission. The chapter on Treatment of Individuals will certainly raise these questions.

Meanwhile, the book makes it quite apparent that all is not well and that the more people can be persuaded to consider the problem, with as unbiased an approach as is possible, the sooner a better solution will be found. A Departmental Committee Report will not alone provide the answer.

T. E. JAMES.

Show Business and the Law. By E. R. Hardy Ivamy, LL.B., PH.D., Barrister-at-Law. London: Stevens & Sons, Ltd. 1955. x and 168 and (tables of cases and statutes) 11 and (index) 9 pp. (25s. net.)

In his Preface the author states that his aim has been to provide an up-to-date work to satisfy the needs both of those engaged in the entertainment world and of their legal advisers: in this aim Mr. Ivamy has entirely succeeded. This book gives the most comprehensive consideration to problems, civil and criminal alike, which may affect management and artiste in all branches of show business, and covering the many offences which may be committed, *e.g.*, those relating to dangerous performances, storage of films, censorship of plays, Sunday entertainments, etc. Here are chapters dealing with the acquisition of rights in the script, the relations between cast and management in the theatre, in the music-hall, in the circus, in the film studio, and on radio and television. The major part of the book deals with what the author has called the Performance, such matters as the licensing of the building, censorship and copyright being considered in detail.

In earlier works on this subject a general exposition of the law of contract has been given with illustrations of its application to theatrical contracts. Mr. Ivamy has provided us with much more practical material in that he has given us an analysis of the Standard Contracts which have been negotiated between the artistes' trade unions and the managerial associations.

This is but one example of the practical approach adopted in this book. The number of cases illustrating the legal principles involved is another example of this approach, and although many of these do not appear in law reports they should be of great assistance to lawyers and laymen alike. Of particular value to the lawyer will be the lucid analysis of the rules and regulations relating to film registration and quota arrangements. The index is excellent.

D. A. GODWIN SARRE.

Archbold's Criminal Pleading, Evidence and Practice. Sixth Cumulative Supplement and Noter-up to the thirty-third edition. By T. R. Fitzwalter Butler and Marston Garsia, Barristers-at-Law. London: Sweet & Maxwell, Ltd. (Supplement, 10s. 6d. a year; Noter-up service, 7s. 6d. a year extra.)

This Supplement and Noter-up bring the book up to date to September 1, 1955.

Books received:

The Railroad Police. By H. S. Dewhurst. A monograph in the Police Science Series edited by V. A. Leonard, Chairman, the Department of Police Science and Administration, State College of Washington. Springfield, Illinois: Charles C. Thomas; Oxford: Blackwell Scientific Publications, Ltd. 1955. ix and 203 and (index) 7 pp. (40s. net.)

Notes sur L'Affaire Domicini suivies d'un essai sur le caractère des personnages. By Jean Giono de l'académie Goncourt. Gallimard: Paris. 1955. 152 pp. (350 frs.)

Articles:

British Journal of Delinquency, Vol. 6.

- Symposium on predictive methods in the treatment of delinquency, p. 82.
- Predictive research. A critical assessment of its practical applications, p. 99.
- Prognosis or prediction: a psychiatric examination of the concept of "recidivism," p. 116.
- A follow-up study of criminal psychopaths, p. 126.
- The impact of correctional programmes on inmates, p. 138.
- Intelligence, criminality and the expectation of recidivism, p. 147.

Modern Law Review, Vol. 18.

- The burden of proof in bigamy, p. 452.
- The McNaghten Rules, p. 505.

Journal of Criminal Law, Criminology and Police Science, Vol. 46.
Delinquency work in Britain: a survey of current trends, p. 172.
Arrest without warrant: extent and social implications, p. 187.
Effect of social environment upon former felons, p. 226.
Police methods for handling delinquent youth, p. 255.
Truth serum, p. 259.
Insurance motive fires, p. 277.

Magistrate, Vol. 11.
Sexual offenders, p. 106.

Solicitors' Journal, Vol. 99.
Trial on indictment or summarily, p. 667.

Law Times, Vol. 220.
Road traffic: duty to report accident, pp. 146, 161.
United Nations and the prevention of crime, p. 171.
Magisterial topics, p. 203.

Justice of the Peace, Vol. 119.
Fine on a child, p. 584.
Appeals to quarter sessions, p. 600.
International Congress on Criminology, p. 623.
Duty to report accident under the Road Traffic Act, 1930, p. 636.
Legal time saving: a layman's suggestions (breaking and entering cases), p. 654.

Police Review, Vol. 63.
County police communications, pp. 624, 644, 662, 676.
American notes, p. 690.

Police Chronicle.
Science and the young policeman, September 9, 1955, p. 2; September 16, 1955, p. 7; September 23, 1955, p. 9; September 30, 1955, p. 9.

THE CRIMINAL LAW REVIEW

Editors

JOHN BURKE and PETER ALLSOP, M.A.

Barristers-at-Law

Editorial

Disqualification for life

In *R.* v. *Wallace* [1955] N.I. 137 the question was raised whether a penalty of disqualification for life for holding a driving licence was a penalty for a certain and definite period. Wallace who had pleaded guilty to two charges of driving a motor-vehicle while under the influence of drink and to a charge of reckless driving was sentenced to two years' imprisonment and disqualified for life for holding a driving licence. On appeal it was contended that a sentence of disqualification for life is illegal, since it has been decided in the English case of *R.* v. *Fowler* (1937) 26 Cr.App.R. 80 that a court cannot disqualify for an indefinite period; a sentence of disqualification must be for a time that is certain. The Court of Criminal Appeal held that disqualification for life is disqualification for a certain and definite period; Black J. delivering judgment said: " This court would be slow to hold that the legislature intended that a disqualification for sixty, seventy or eighty years could be imposed . . . but not disqualification for life."

Drunkenness and car fumes

When William Osman was tried recently at London Sessions for being under the influence of drink while driving a car, the defence was that he had been affected by fumes from a faulty exhaust on the car he was driving. Dr. F. E. Camps, the pathologist, gave evidence that although a motorist would not feel the effect of carbon monoxide poisoning while sitting in the car he would do so on getting out; he would stagger about and would suffer some mental and physical confusion. There was, he said, only one satisfactory way of deciding whether a man was drunk or was suffering from the effects of carbon monoxide poisoning and that was by taking a blood test; the possibility of carbon monoxide poisoning should never be ruled out.

Summing up, Mr. Vernon Gattie said: "There is no single test for drunkenness. All the symptoms can be caused by other things. One has to take everything as a whole. The value of blood tests is a matter of dispute between high medical pathologists. It can do no more than tell you how much liquor is left in the blood."

The jury found Osman guilty and he was fined £25 and disqualified from driving for twelve months.

Borstal

Prison officers at Feltham Borstal Institution, Middlesex, have complained at the amount of freedom allowed to the boys detained there, many of whom are of low mental capacity. Boys in the "trusted" class, of whom there are about seventy, are allowed out of the main buildings and into the grounds without supervision, and it is alleged that the prison officers' wives and children who live there have been attacked, threatened and otherwise insulted by these boys. The officers' request that boys should not be allowed out except under guard has been refused because the authorities consider that this would prevent the development of a sense of responsibility. Similar protests have been made in other Borstal institutions and in some cases have led to changes in the rules.

At the opening of the West Riding Quarter Sessions on October 10 Mr. G. R. Hinchcliffe said that the court would have to consider imposing more sentences of Borstal training in cases of juveniles who commit crimes after being warned and also more severe sentences in respect of certain offences such as larceny, receiving stolen goods, housebreaking and shopbreaking and sexual offences, which were increasing.[1]

Police dogs

As an experiment police dogs and their handlers have been patrolling London in radio vans. The vans are in touch with Scotland Yard's information room and as soon as a crime call is received a message is passed to them. The vans can reach any part of a police division in less than two minutes and it is hoped that in this way the use of dogs may be made more effective by bringing them on to the scene of the crime while the scent is still fresh.

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[1] *Wakefield Express*, October 15, 1955.

Police recruitment

At the end of September the police in England and Wales were some 9,700 short of authorised establishment. Speaking at the annual conference of the Police Federation in London on November 2, the Home Secretary said that the indications were that the rate at which crime had been falling in the last year or two was not being maintained and he had therefore been much disturbed that over the last year the number of policemen had fallen by some six hundred. In particular he expressed concern at the drift from the police of men retiring without pension after some years' service, just at the time when they had acquired a measure of experience, which is especially valuable to the police officer. Although there are now well over 2,200 police cadets throughout the country, these only provide a limited proportion of new recruits and many other sources must be looked to for more policemen. The Home Secretary praised the work of the Police Council for Great Britain. Latest returns relating to the housing of police show that all but a very few police authorities expect to meet really urgent existing cases by next summer.

Employment of children

At Plympton on October 3 a father who allowed his daughter to help him in his newsagent's shop on a Sunday morning was found guilty of employing her after permitted hours contrary to a by-law made under the Children and Young Persons Act, 1933. The Bench found that employment had been proved, but considering it a purely technical offence granted an absolute discharge on payment of eight shillings costs. For the defendant Mr. Stanley Goodman argued that if the by-law, which was intended to protect children from being used as sweated labour, were enforced strictly a scoutmaster would be breaking the law if he encouraged scouts to go in for the Bob-a-Job week.

Criminal statistics

The Criminal Statistics for England and Wales, 1954 (Cmd. 9574) [6s. net], show a decrease of 8·1 per cent. in the number of persons found guilty of indictable offences as compared with 1953 and an increase of 5·5 per cent. in the number found guilty of non-indictable offences. The number of indictable offences known to the police dropped by 38,662 and of such offences 49·2 per cent. were cleared up. Offences of violence against the person were the only class of indictable offences which showed an appreciable increase. Traffic offences dealt with summarily formed 54·2 per cent. of all the offences of which persons were found guilty.

Drunkenness

Statistics of the number of offences of drunkenness proved in England and Wales for the year 1954 have been published (Cmd. 9583) [9d.]. 297 fewer offences were recorded; this is the second year running in which their number has decreased.

Parliament

Police

The Home Secretary rejected a suggestion that a committee should be appointed to examine the pay and conditions of the police forces throughout the country and make recommendations. Such a committee was formed in 1949 under the chairmanship of Lord Oaksey and the detailed report which it prepared has formed the basis of subsequent developments in the police service and remains of lasting value (H.C. Debates, Vol. 545, col. *47*; October 27, 1955).

Prison officers

Replying to a debate on the adjournment, the Home Secretary spoke of the conditions of service of prison officers. He regards the present shortage of such officers as serious, but is more concerned for the future because of the sharp fall in recruitment; the chief cause of this, the Home Secretary believes, is the more attractive conditions of industrial employment (Vol. 545, cols. 1173 *et seq.*; November 2, 1955).

Motor horns

The Commissioner of Police of the Metropolis has studied the new regulations in Paris forbidding the sounding of motor horns, but has decided that there is insufficient abuse of motor horns in London to justify him in recommending a corresponding prohibition in that city. It is already an offence in this country to sound a horn on a stationary vehicle or in a built-up area between 11.30 p.m. and 7 a.m. (Vol. 545, col. *15*; October 25, 1955).

Executions

The Home Secretary has noted for legislation at a convenient opportunity the recommendation of the Royal Commission on Capital Punishment that notice of an execution should be given in the press instead of by posting outside the prison gate. He does not think it would be right to refrain altogether from announcing the date and place of an impending execution (Vol. 545, col. *48*; October 27, 1955).

Coroners' courts

The Home Secretary has refused to make an investigation into the procedure of coroners' courts with special reference to the introduction of legislation to discontinue the jury system. He does not consider it necessary and could not hold out any hope of legislation on this subject (Vol. 545, col. *105*; November 1, 1955).

Cumulative Index

We publish at the end of this issue a Cumulative Index for the years 1954 and 1955. In addition this Index is a complete guide to statutory changes in relation to offences. An asterisk inserted after a page reference shows that the offence to which the entry relates has been affected by an Act or Order, *e.g.*, by being abolished, extended or modified.

Judicial appointments

Mr. John Charles Dundas Harington has been appointed Recorder of the Borough of New Windsor and Mr. Richard Michael Arthur Chetwynd Talbot, Recorder of the Borough of Banbury.

PUBLISHERS' NOTICE

It is regretted that, owing to the continued rise in the cost of printing, paper and overhead expenses, it has become necessary to increase the subscription rate of this journal for 1956 to 32s. 6d.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Review. They should be sent to the EDITOR, *Criminal Law Review*, 3 CHANCERY LANE, LONDON, W.C.2. *Every effort will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

The Definition of Embezzlement

By Rupert Cross, M.A., B.C.L.

The object of this article is to draw attention to a problem concerning the reconciliation of some of the cases on embezzlement which is raised in an acute form by the decision of the Court of Criminal Appeal in *R.* v. *Davenport* [1954] Crim.L.R. 383.[1]

The statutory definition

The creation of the offence of embezzlement was due to the technicalities of the common law of larceny, according to which a servant could not be guilty of stealing things received on behalf of his master until they had come into the latter's possession, although he could be convicted of the theft of things with which he had been entrusted by his master as long as he merely had the custody of them. This gap was first filled by statute in 1799, and the current definition of embezzlement is contained in the following provision of section 17 of the Larceny Act, 1916: "Every person who—(1) being a clerk or servant or person employed in the capacity of a clerk or servant, . . . (*b*) fraudulently embezzles the whole or any part of any chattel, money, or valuable security delivered to or received or taken into possession by him *for or in the name or on the account of* his master or employer, . . . shall be guilty of felony." All the previous definitions contained the words in italics with which this article is primarily concerned, but the statute of 1799, and an enactment of 1828 by which it was replaced, included the additional requirement that the servant's receipt should have been "by virtue of his employment." This was deliberately omitted from section 68 of the Larceny Act, 1861,[2] but the precise effect of the omission has never been fully considered.

The case law

The interpretation of the words "for or in the name or on the account of his master," has been affected by the following cases which are mentioned out of their chronological order for the sake of clarity: *R.* v. *Wilson* (1839) 9 C. & P. 27, *R.* v. *Aitken*

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[1] The article springs from a discussion of this case which I had with my colleague, Mr. G. H. Treitel, Fellow of Magdalen College, Oxford, to whom I am greatly indebted.

[2] Russell on *Crime*, 4th ed., vol. 2, p. 451.

(1883) C.C.C.Sess.Pap. xcvii, 336, *R.* v. *Cullum* (1873) 2 C.C.R. 28, *R.* v. *Gale* (1876) 2 Q.B.D. 141, and *R.* v. *Davenport* [1954] Crim L.R. 383. Although the first two are merely the decisions of a recorder, they have acquired a leading status on account of their inclusion in successive editions of Kenny's *Select Cases on Criminal Law.*[3]

In *R.* v. *Wilson* it was held that a servant who sold his master's goods without authority could not be convicted of embezzling the proceeds because he did not receive them " for or on account of his master, but contrary to, and in breach of, his duty towards that master." A similar principle was applied in *R.* v. *Aitken,* where the prosecutrix handed blank cheques to a book-keeper, who completed and cashed them without her authority. He was acquitted on a charge of embezzling the proceeds because he did not receive them " in his capacity of servant, but on forged cheques."

In Kenny's *Outlines of Criminal Law,* 16th ed., at p. 265, it is said that a servant cannot embezzle anything he obtained by an act which was outside the authorised scope of his employment, and this statement is illustrated by the two cases which have just been mentioned. It is also supported by the well-known decision in *R.* v. *Cullum,* where a bargee was held not to be guilty of embezzlement when he received a fee for the unauthorised carriage of cargo and failed to account for it. There was no evidence that the accused professed to carry the cargo for his employer, or that the person who made the payment intended it to go to the latter. " Under those circumstances, the money would not be received ' for,' or ' in the name of,' or ' on account of ' his master, but for himself, in his own name, and for his own account." [4]

In *R.* v. *Gale,* the head manager of a company received cheques drawn to his order by branch officers. The cheques represented sums due to the company, and the head manager was required to endorse them over to the cashier; but he cashed some of them through friends, and applied the proceeds to the reduction of his personal overdraft with his employer. He was held guilty of embezzling these sums, although there was no evidence that the friends knew of the company's existence, for the sole question was whether he received the payment on his master's account, " and he did so because it was his duty to pay over the proceeds at once." [5] This case was followed in *R.* v. *Davenport,* where the secretary of a company was held guilty of embezzlement when, instead of carrying out his instructions to complete his employer's cheques in favour of its creditors, he inserted the name of a friend's bank as payee, and obtained cash for them. "That money, as it was the proceeds of his master's cheque, was received for and on behalf of his master and . . . the appellant . . . applied it to his own uses instead of handing it over."[6]

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[3] See now Turner and Armitage's *Cases on Criminal Law,* pp. 313–4.

[4] *Per* Bovill C.J. (1873) 2 C.C.R. 28 at 31–32.

[5] *Per* Cockburn C.J. (1876) 2 Q.B.D. 141 at 145.

These cases show that a servant may be under a duty to pay over the proceeds of his master's property, although he obtained them by means of an act which was outside the authorised scope of his employment, and this gives rise to the problem of reconciling *R.* v. *Wilson, R.* v. *Aitken* and *R.* v. *Cullum,* on the one hand, with *R.* v. *Gale* and *R.* v. *Davenport* on the other hand.

Reconciling the cases

The problem can only be completely solved by distorting the facts and ignoring the judgments in the last two cases, for *R.* v. *Gale* and *R.* v. *Davenport* contravene the principle that a servant cannot embezzle anything obtained by an act outside the authorised scope of his employment unless it is assumed that the accused had authority to cash cheques. This fact is not given in the reports, and, even if it were the case, it is not made the basis of any of the judgments. Accordingly, it is submitted that some of the decisions which have been mentioned will have to be jettisoned from expositions of the current law.

R. v. *Aitken* should certainly suffer such a fate as its facts are indistinguishable from those of *R.* v. *Davenport,* the decision of a superior court, and, if the proceeds of a servant's forgery of his master's cheques are received on the master's account, the same should be true of the proceeds of a servant's theft of his master's goods. *R.* v. *Wilson* will therefore have to be excluded from selections of leading cases and students' textbooks on the criminal law, and perhaps it should not have been included in them in the first instance, for it was decided on the statute of 1828, and the recorder appears to have been influenced by the obsolete requirement that the servant's receipt should have been by "virtue of his employment."

R. v. *Cullum* cannot be disposed of in the same way, if only because it is a decision of the Court for Crown Cases Reserved. It is difficult to reconcile with *R.* v. *Gale* and *R.* v. *Davenport,* owing to the rule that a servant is under a duty to hand over to his master any sums he receives in consequence of an unauthorised use of the latter's property[7]; but there are two respects in which it might be held to differ from the other decisions. In the first place, a doubt may be raised whether Cullum behaved "fraudulently" within the meaning of the definition of embezzlement—the prisoner's use of the barge was a wrongful act, "yet it was not dishonest, in the sense of stealing."[8] Secondly, it is arguable that a servant's unauthorised receipt is only on account of his master if it represents the proceeds of the latter's property, as opposed to remuneration for work involving an improper use of such property.

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[6] *Per* Lord Goddard C.J. (1954) 38 Cr.App.R. 37 at 42, and this notwithstanding the fact that the accused's conduct appears to have amounted to forgery.

To revert to the statutory definition, the accused's receipt has to be "for or in the name or on the account of his master." Some limits must be placed upon the natural interpretation of these words, for they are wide enough to cover the case of a servant who misappropriates goods or money of which the custody has been given to him by his master, and it is well known that such conduct does not constitute embezzlement, but larceny.[9] Possibly the only limit is that the receipt must be from a third party, but this would produce some curious results. "Suppose a person in service as a carter had also a horse and cart of his own, and employed them to do some or other work, professing them to be his master's, and receive hire for it 'in the name of' his master, would that be embezzlement?"[10] Possible further limits are that the servant's receipt from a third party should be in the course of his employment, which is, as we have seen, too narrow, or that such receipt should be one for which he is under a duty to account, but this might well prove to be too wide. It would mean, for instance, that an employee who received a payment for betraying trade secrets could be convicted under section 17 of the Larceny Act, 1916.

The law may be that the receipt from a third party must either be authorised by the master, or else represent the proceeds of an unauthorised disposition of something capable of being stolen entrusted by him to the accused,[11] and various other middle courses might be suggested. All that can be said with certainty is that the cases do not provide any clear indication how the definition of embezzlement is to be interpreted. Perhaps this should have been apparent from the contrast between the judgments in *R.* v. *Cullum* and *R.* v. *Gale,* but the problem is raised in an acute form by the facts of *R.* v. *Davenport* because it appears to be the first case in which a servant has been convicted of embezzling the proceeds of an unauthorised disposition of something received from, and not for, his master.

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[7] *Reading* v. *Att.-Gen.* [1951] A.C. 507. The rule may not have been so clear in 1873 as it is today. But it was unambiguously stated by Page Wood V.-C. in *Shallcross* v. *Oldham* (1862) 2 J. & H. 609 at 616.

[8] *Per* Bramwell B. (1873) 2 C.C.R. 28 at 32.

[9] *R.* v. *Smith* (1814) R. & R. 267; *R.* v. *Hawkins* (1850) 1 Den 584; *cf. R.* v. *Bottomley* (1922) 16 Cr.App.R. 184, deciding that, by way of contrast with the corresponding words in s. 17 (1) (*b*) of the Larceny Act, 1916, the words "for or on account of any other person" in s. 20 (1) (iv) (*b*) mean "for any person other than the accused," and thus include the person from whom property is received.

[10] *Per* Bramwell B. in *R.* v. *Cullum* (1873) 2 C.C.R. 28 at 32.

[11] *Cf. R.* v. *Read* (1878) 3 Q.B.D. 131, where a gamekeeper was unsuccessfully charged with the embezzlement of rabbits killed and taken as one

Embezzlement and fraudulent conversion

The decision also gives food for thought concerning the relation between embezzlement and fraudulent conversion under section 20 (1) (iv) of the Larceny Act, 1916. This misdemeanour is committed by someone who, being entrusted with property in order that he may apply, pay or deliver it for any purpose, fraudulently converts the property or "any proceeds thereof." The definitions of embezzlement and fraudulent conversion are sometimes said to be mutually exclusive,[12] but the view is fast becoming one which it is impossible to maintain.

In *R.* v. *Davenport* the Court of Criminal Appeal considered that the accused should have been convicted of the fraudulent conversion of a number of his employer's cheques which he had completed in an unauthorised way, but, instead of being charged with this offence, he had been found guilty of larceny of the proceeds of the cheques, and the court substituted a conviction for embezzlement of such of the latter as had actually been received by him in cash.[13] If the accused was guilty of fraudulent conversion of the cheques entrusted to him for the purpose of completing and delivering them to creditors, the wording of section 20 (1) (iv) seems to indicate that he was also guilty of this offence with respect to the proceeds of the cheques, including the very sums which he was held to have embezzled. It is therefore difficult to escape the conclusion that Davenport's conduct with regard to the cash received by him came within both the definition of embezzlement and the definition of fraudulent conversion, although he could not

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transaction, so that he could not have been guilty of stealing them. He sold the rabbits, but was not charged with embezzlement of the proceeds. The animals can hardly be said to have been "entrusted" to the accused, but none of the authorities refer to such a requirement.

[12] Kenny's *Outlines of Criminal Law*, 16th ed., p. 270.

[13] The court acted on s. 44 (2) of the Larceny Act, 1916, and s. 5 (2) of the Criminal Appeal Act, 1907. The accused made a number of the cheques payable to his creditors' bank, and the convictions in respect of these cheques were quashed.

have been convicted of the latter crime because he was not charged with it.

The truth of the matter is that any attempt to draw a hard and fast line between offences is bound to prove abortive in the long run if their statutory definitions overlap on anything approaching a grammatical construction of their wording. In *R.* v. *Williams* [1953] 1 Q.B. 660,[14] the Court of Criminal Appeal expressed the opinion that, on a proper indictment, the accused might have been convicted of fraudulent conversion in respect of conduct which was held to be larceny, and *R.* v. *Davenport* seems to show that the same facts can sometimes constitute either embezzlement or fraudulent conversion. This may be untidy, but what else can be expected from such a piecemeal assortment of antiquated statutory provisions as the Larceny Act, 1916? It had great value as a consolidating measure, but surely the time for a complete remoulding of the law relating to crimes against property and possession is long overdue.

The Duties and Responsibilities of Prosecuting Counsel[1]

By Christmas Humphreys,
Barrister-at-Law, Senior Prosecuting Counsel,
Central Criminal Court

A prosecuting counsel, and I include in that term all, whether solicitors or barristers, who prosecute in a criminal court, represents the Crown, and his powers—nowadays it may be hers—are correspondingly enormous. His responsibility for the right user of those powers is commensurate. What are these powers? They may be classified under four heads.

The powers of prosecuting counsel

In the first place, he has unlimited funds behind him. True, in this matter as in all else, it does not follow that because a power is available it will be used to its full capacity, but the power is nevertheless in hand. Secondly, he has the whole police force of the country at his command. If, for example, to prove a point it is necessary to make inquiries at every public-house within a mile radius of a crime, that inquiry will be made, and in a recent London murder the statements taken from members of the public ran into four figures. Thirdly, every prosecutor can use, through the police, the enormous powers of a public appeal for information, through the press, radio, television and cinema screens, and witnesses so obtained can be brought from one end of the country to the other and there lodged at the public expense for so long as their services are required. I have myself caused a man to be brought from North Africa by air and kept in England for a month in order that he might give evidence against a police officer charged with blackmail. Fourthly, and this is a growing branch of criminal procedure, the forensic laboratories of the police are available to check and often to prove a point against a suspected man, and to prove it to such perfection that the defence, while trying to " explain " the fact, do not attempt to deny it. In this connection I cannot refrain, at the risk of irrelevance, from describing a recent incident at the Old Bailey. A girl called for the defence, with an elaborate gesture of coy reluctance flatly refused to disclose the nature of the material which arrived, in circumstances which she related at length, on the turn-up of her young man's trouser leg after a visit to a farm. " I could not," she exclaimed, " use such a rude word in public." Finally she was persuaded to reveal that it was, as the forensic laboratory had proved, dung. But as the whole point of the defence was to " explain " the presence of *cow*-dung on the trousers there was much merriment when the young lady, asked as to the genesis of the offending matter, finally answered: " A n'orse."

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[14] *Cf. R.* v. *Misell* (1926) 19 Cr.App.R. 109 at 111, suggesting that a servant can never be convicted of an offence against s. 20 (1) (iv).

[1] This is a shortened version of an address to the Inns of Court Students Union on July 5, 1955.

Now here is a fact of vital importance about these powers—all of them are nowadays equally available to the defence. Not only are the defence entitled to call upon the prosecution to assist them to find witnesses and bring them to court, or even to make wide inquiry for certain evidence believed to exist, and to spend public money in the course of that inquiry, but I believe it to be the duty of prosecuting counsel to offer that aid. And why? Because the prosecutor is at all times a minister of justice, though seldom so described. It is not the duty of prosecuting counsel to secure a conviction, nor should any prosecutor ever feel pride or satisfaction in the mere fact of success. Still less should he boast of the percentage of convictions secured over a period. The duty of the prosecutor, as I see it, is to present to the tribunal a precisely formulated case for the Crown against the accused, and to call evidence in support of it. If a defence is raised incompatible with his case he will cross-examine, dispassionately and with perfect fairness, the evidence so called, and then address the tribunal in reply, if he has the right, to suggest that his case is proved. It is no rebuff to his prestige if he fails to convince the tribunal of the prisoner's guilt. His attitude should be so objective that he is, so far as is humanly possible, indifferent to the result, with this exception always, that I have never myself continued a prosecution where I was at any stage in genuine doubt as to the guilt, as distinct from my ability to prove the guilt, of the accused. It may be argued that it is for the tribunal alone, whether magistrate or jury, to decide guilt or innocence. I repeat that the prosecutor is fundamentally a minister of justice, and it is not in accordance with justice to ask a tribunal to convict a man whom you believe to be innocent.

Assisting the defence

I consider it the duty of prosecuting counsel to assist the defence in every way. Whenever, as nowadays is normal in cases of gravity, the accused is represented, I approach his counsel before the trial, as soon as I know his identity, to see in what way I can help, and in return for such help to find, if possible, what parts of my case are admitted, so as to reduce unnecessary evidence. In many cases I am told of witnesses or documents wanted by the defence, or further information which the Crown may already possess. In the Towpath murder,[2] for example, witnesses were fetched from Northumberland to help the defence, although it seemed to the Crown that their evidence was quite useless; otherwise, they would have been called for the Crown. And I shall never forget Det.-Supt. Hannam's magnificent reply to defending counsel, at the end of the most gruelling cross-examination to which, in my experience, an officer has ever been subjected. Patently nearly exhausted with the ordeal, he was asked by counsel, who for hours had charged him with everything from perjury to conspiracy to convict an innocent man, could the officer help him by making some further inquiries "Sir," replied Mr. Hannam, "I am only too willing to do anything I can at any time to assist the defence." That was true, and it should be the ideal of prosecuting counsel.

On the other hand, it is the duty of prosecuting counsel to prosecute and he need not rise to his feet and apologise for so doing. It is not unfair to prosecute, and the defence will look after the defence. I believe in hard hitting, but with blows that are scrupulously fair.

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[2] See article at [1954] Crim.L.R. 179.

I have said that all the powers of the prosecution should be available for the defence. The same may be said to apply to information in their possession, though in this matter there is room for difference of opinion. There is always available to the Crown a mass of information, much of it irrelevant to the issue and much that, though possibly relevant, is wholly unreliable. How much of this that is not being used in the depositions and exhibits should be made available to the defence? Generally speaking, any information which the prosecution does not intend to use, but which might, if believed, assist the defence, should be made available. The present custom in London is to inform the defence that a witness, giving the name and address, might be able to assist them. For myself, I take the view that a copy of the statement taken should be given to the defence, and I satisfy my own principles by handing a copy of it to defending counsel at the trial.

Far more difficult is the question of disclosing to the defence the previous convictions of witnesses for the prosecution. Where they are trivial or very old, or where, though serious, they pertain to a witness only on the fringe of the case for the Crown, they need not be mentioned. But I believe it to be the duty of the Crown to make known to the defence the convictions of a man whose evidence is really material to the Crown's case; still more if he is virtually the prosecutor, and the credibility of his evidence may be the deciding factor in the jury's mind. This can either be done by oneself disclosing to the jury that the character of the said witness is such that they should regard his evidence with special care, or by lending, but not giving to the defending advocate, the material for cross-examination. The former method must be used when the defendant has himself a bad character, for a cross-examination thus invited will necessarily open the accused to the equivalent attack.

Duties of prosecuting counsel

These are some of the principles which, in my view, should guide all prosecuting counsel in the right exercise of their enormous powers. We may now turn to a brief survey of their duties, as they generally appear, in the course of which these powers are exercised.

All prosecutions are brought by the police, the Director of Public Prosecutions, some other Government Department's own legal staff, or by private individuals and companies, and I should think in that order of quantity. In each case, some person coming within my definition of prosecuting counsel begins the proceedings. He exercises at once a *de facto* power of summons or arrest, for a magistrate will rarely refuse to issue process where a reputable authority applies for it. He will draft the charges on which process issues; he will decide the venue of the initial proceedings and the mode of proof. He will, in deciding whom to charge, exercise the grave choice as to whom to put in the dock and whom in the witness-box to give evidence against them. He will often have the power to decide whether the proceedings should be summary or before a jury, and whether bail should be granted and if so, on what terms. All this is obviously within the range of a "minister of justice," but having conceived, formulated and built up to the point of acceptance by the committing magistrate his case he should, even at this early stage, consider how he can help his colleague for the defence. If notice of further evidence is already planned to be given, he can disclose its nature in advance, and defending counsel or solicitor may already have decided what further evidence he will require and ask assistance to procure it.

Although up to this point the "prosecuting counsel" may be a solicitor, at the trial there must be counsel and the counsel must be "free," that is, "on the cab-rank" of the general Bar and not in the full-time employ of any Government Department (the law officers always excepted).

Treasury counsel

At the Old Bailey the standing counsel for the graver cases are known as Treasury Counsel. Their origin may here be explained. A long time ago it was found convenient for the Attorney-General of the day to appoint divers practising counsel of the junior criminal Bar to represent him at the Old Bailey in the cases committed there for trial by the Director of Public Prosecutions, as he was later called. This office was originally a department of the Treasury, and the Solicitor to the Treasury was also Director of Public Prosecutions. The first to bear the title was Sir John Maule Q.C., but the first exclusively Director of Public Prosecutions was Sir Charles ("Willie") Mathews, whose offices, nevertheless, were still in the Treasury offices in Whitehall. With Sir Archibald Bodkin (1920–1930) the office became completely separate from the Treasury when he moved to premises in Richmond Terrace. Nowadays, the Director has premises built for the purpose in Buckingham Gate. The first counsel appointed were Sir Harry Poland and Montagu Williams. Later the number was raised to four, with Frederick Mead, Charles Mathews, Charles Gill and Horace Avory. These were soon known as Treasury Counsel; the name has remained long after the cause of it has disappeared. There are now three senior and three junior counsel, but all alike are " stuff-gownsmen," and on taking " silk " they must resign their appointment. They are free to take any other work in any other court, but naturally are in honour bound to give precedence to the briefs allotted to them each session by the Director's department. Their briefs are not marked and their fees are paid at the end of each session as marked in the Director's office. For circuit cases the Attorney-General has a separate list for each circuit, from which he nominates counsel for each brief, and there are no standing Treasury counsel outside London.

The Old Bailey team, the leaders of whom, I do not attempt to conceal, consider themselves the equals of any leader on circuit, has included many notable men. At one time the senior of the six was successively Sir Archibald Bodkin, Sir Richard Muir and Sir Travers Humphreys, and since that time the team has contributed, besides my father, Mr. Justice Oliver and Mr. Justice Byrne to the Queen's Bench, as well as the present Recorder, the Common Serjeant and His Honour Judge Maude Q.C. to the Old Bailey's permanent Bench.

Most other prosecutions at the Old Bailey, as almost all at London and Middlesex Sessions, are conducted by the Solicitor's Department of the "Yard," which has its own list of counsel among whom the work is distributed. A young man's first ambition on coming to the criminal Bar is to be placed on this list, for save for an occasional " soup " such briefs will be his first, and for a long time his only, chance of proving himself as prosecuting counsel.

A case at the Old Bailey

Let us assume, then, that prosecuting counsel is presented with a brief for the Old Bailey, and it matters not whether he conducted the proceedings in the court below or whether he is seeing the brief for the first time. He will perhaps be asked to draw the indictment, although in most simple cases this task is performed by the Clerk of Indictments at the Old Bailey. He may, after conference, want notice of further evidence given to prove facts not hitherto adduced. He may decide to use one of the accused as Queen's evidence against the others; if so, there can be no bargaining. It is not, in my view, right to cause it to be intimated to the accused that if he is prepared to give evidence against his fellows no evidence will be given against him and he will be released. This is putting tremendous pressure on a man to give what may be false evidence. In the Clapham Common murder,[3] for example, I sent a message to counsel for four of the six youths committed for murder to the effect that I proposed to offer no evidence against their clients, and that my decision was final. I added that if any youth wished to give evidence in accordance with his statement already in my possession I would call him for the Crown, which might, of course, help him with his punishment for the less offence with which he still stood charged. Two accepted the offer, two refused. All were released from the charge of murder.

It is at this stage, if not before, that I consider it right to approach the defence to see how I can help their defence against my case as they already know it. Only when I have, as it were, provided all the weapons I can with which to fight my case, do I feel free to fight out in court, with a clear conscience, the forensic battle of the prisoner's guilt or innocence according to English law. Meanwhile, prosecuting counsel is busy, in the words of the late Sir Richard Muir, stopping up the rat-holes, that is, working out what the defence must be or may be, and seeing what may be done to close the loop-holes still remaining.

Differences between the prosecution and the defence

When issue is joined, the differences between prosecuting and defending in a criminal case immediately appear, and they are none the less wide for the fact that the two counsel concerned may on the following day be defending and prosecuting respectively in the very same court. At the opening of the trial the defence have in their possession every fact and document on which the prosecution proposes to rely. The prosecutor, on the other hand, has no knowledge of the defence save what may be gleaned from any cross-examination before the committing magistrate, and whatever defending counsel cares to tell him. There are no pleadings in crime; the defence may do precisely nothing, and at the close of the Crown's case submit no case to answer. They may, in the alternative or in addition, take a point of law without previous intimation to the prosecution, and win on that alone. For myself, I lean towards more and more pleadings, in the sense of an exchange with opposing counsel of the points disputed and those agreed, and the cases on which, in any dispute on law, I propose to rely. When prosecuting I am always willing to tell defending counsel what evidence I shall not dispute if tendered by the defence, and when defending I am, save on rare occasions when I am "sitting on a point" deliberately, always willing to say what I concede as proved, and to reveal what is in dispute. When I propose to take a point of law I give a list of my authorities to the Crown. But the distinction between counsel remains. The Crown is interested in justice; the defence in obtaining an acquittal within the limits of lawful procedure and Bar etiquette.

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[3] *R.* v. *Davies.*

In action, both counsel are impersonal, but whereas some element of the theatrical, of forensic emotion is still permitted to the defence, any passion of argument, any grandiloquence of phrase or " playing to the gallery " is out of place in the representation of the Crown. The day has passed when the case for the prosecution is ever pressed, and though defending counsel will always, for want of a better defence, attack his opponent for the jury's benefit with allegations of unfair pressure, inaccuracy and all other vices short of subornation of perjury, he will get no reaction in the prosecuting counsel's reply to the jury, if it is still to come, save correction where there has been any error, and a quiet review of the actual evidence.

Wherever English law obtains the court will rely, and know that it can safely rely, on both sides to assist in the right presentation of the law to the jury. Even defending counsel must reveal any case which he knows to derogate from his argument. How much more must the Crown, at all stages of the trial, reveal any law which helps the defence, and reveal, in my view, every fact of possible relevance which may appear as the trial proceeds. I shall never forget the series of incidents behind the scenes of the trial of Hume for the murder of Setty in 1950. Night after night some crisis of evidence arose. Once, it was revealed that a man in a Manchester gaol might help the defence; he was sent for by the Crown and brought to the cells at the Old Bailey next morning, only to be returned when it was found that he was not the man required. On another occasion it was thought that the Press might have interfered with the administration of justice; that matter was ventilated in open court. At the very last minute a witness came forward whose evidence might have been conclusive. I did not press for its admission when speeches had already been made. My point is that all such matters, if they can conceivably help the defence, should be disclosed at once to the defence and, if need be, to the court. Always the principle holds, that Crown counsel is concerned with justice first, justice second, and conviction a very bad third.

Duties at the trial

With the actual duties of prosecuting counsel at the trial I need say little, but the choice may be onerous and the decision grave. He may have to amend the indictment; he may have to make up his mind what plea if any to accept which is less than the whole indictment. He may decide to offer no evidence against one defendant in order to use his evidence against the rest; he may decide to let one man go when another pleads guilty and takes the whole of the blame. He may, while on his feet, have to decide whether or not to accept an unusual verdict of the jury; if the jury disagrees, is it right to ask for a new trial, or fairer now to offer no evidence?

There are times, though they are not many, when counsel may want guidance from the presiding judge. I say not many, for as a rule it is for him to bear his own responsibility. In this case, he should ask permission for the interview and take the defence counsel with him. Never should either counsel attempt to see the judge alone on a matter touching the conduct of the trial. When in want of advice the prosecuting counsel, as any other member of the Bar, has all other members of the Bar, with their accumulated experience, at his command, and for that matter all members—I was about to say of the criminal Bench, but you will know what I mean!

But, generally speaking, all these problems are for prosecuting counsel and for him alone to solve. The responsibility is his and he should not seek to shift it. Let him " take instructions " by all means, in the sense of discussing the matter with those instructing him, but the decision is his, and he is not the mouthpiece of a Government Department. In making his own decisions he will not go far wrong if he exercises any doubt in favour of the accused. True, it has been said of some counsel—and who am I to name names?—that at times they prosecute so gently that it is not easy to know whether they prosecute or defend; on occasions even the Bench has with delicate irony inquired of counsel's status. But if the counsel concerned is troubled about the possible and even probable injustice of that particular trial; if he is convinced that in the circumstances, not all of them before the court, that this particular accused should not in justice be convicted, should he hesitate to throw his own weight into the scales of an acquittal? I know not the right answer to this question, but I know my impenitent own.

When the summing-up is reached, the duty of Crown counsel is largely discharged, for in the matter of sentence he will exercise no grain of pressure towards severity, and will leave his opponent to say what he may in the matter of mitigation. At any appeal he acts as a lawyer only and is merely present to assist the Court of Criminal Appeal to exercise its powers in the interests of justice.

With the result, as with the verdict at the trial, he is enormously unconcerned. He has only one criterion of success in his own efforts—his own standards as a lawyer, advocate and minister of justice. He has only one concern; has he in that particular case achieved or fallen short of the standards of his own ideal? If these are satisfied he is reasonably content, for he will have acted in accordance with the highest traditions of his profession in the administration of English justice according to English law.

Aspects of Forensic Science

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Forged Signatures

"Is this signature forged, and, if so, who forged it?" is the double question so often posed to the document examiner. The possibility of answering this question depends on a number of circumstances; in general it may be said that while the first may offer little difficulty to an experienced man, the second can be answered positively in but a small number of cases.

Forged signatures may be divided into two classes. In the first, we have those forgeries where no attempt has been made to copy a genuine signature, any resemblance the forgery may have to the genuine signature being purely fortuitous. The second class comprises those forgeries where an attempt has been made to copy the outline at any rate of a genuine signature.

There is little difficulty in proving that signatures of the first class are forged, the most convincing demonstration being the proof that they are in the handwriting of the forger. This is, indeed, the only satisfactory way of dealing with the "signatures" of fictitious persons because of the difficulty of proving that such a person does not exist. When real people are involved and it is possible to produce their genuine signatures, the differences between these and the forgeries are usually sufficiently marked to prove the fact of forgery.

The problem of determining the authorship of these "not-copied" forgeries resolves itself into the determination of the authorship of a small quantity of handwriting which has probably been disguised to some extent because it is the rare person who writes a forged signature in his normal handwriting without making some attempt at disguise.

Whilst it may happen that in the majority of these cases there is insufficient evidence to prove authorship to the degree of certainty required in a criminal prosecution, it is often possible to indicate the probable author and so direct the investigation into profitable channels.

With forgeries of the second class, especially where the genuine signature has been cleverly imitated, it is sometimes very difficult to establish that the questioned signature is really a forgery and not an extreme variant of a genuine signature, much less indicate the identity of the forger by a comparison of the handwriting of the forgery with that of the suspect. It is obvious that the more closely the handwriting of the victim has been copied in making the forgery, the less likely are there to be present sufficient of the characteristics of the forger's own handwriting to enable him to be identified in this way.

The problem of exposing a forgery is further complicated by the existence of genuine signatures which have been deliberately written in an unusual manner so that they can be disowned by their authors at a subsequent date.

The first line of attack on a signature which is thought to be fraudulent is concerned with the document as a whole. This is examined with a view to the discovery of any anachronisms connected with the paper, printed matter, typescript or ink.

Paper may be given a limit of age through watermarks and the nature of the fibres included in its make-up and different inks, and in particular the dyestuffs they contain, have been brought into use at different times. Even typescript changes in design from time to time and every character on the typewriter keyboard serves to restrict the period during which a document could have been typed.

When nothing conclusive can be gleaned from the examination of the document as a whole, attention must be directed to the signature itself.

By anyone but the novice, a signature is written with but little attention being given either to spelling or to the details of letter formation. The attention of most people is directed more to what they are signing rather than on how they are forming the letters which make up their signature. The signature, above all others, is the one word which is written automatically and without conscious thought as to its production.

Very often the pen point is in motion before it is placed on the paper and this motion continues when the signature has been completed and the pen is leaving its surface. This continued motion of the pen is revealed when the tips of the ink line at the beginning and end of the signature are examined, for they are found to present a pointed appearance which cannot be confused with the blunt and thickened ends which are present whenever a pen point rests even momentarily on the paper.

In writing a genuine signature, there is a fluent motion of the pen throughout the writing, because at no time is the writer in any doubt with respect to penhold, letter design or the variation in pressure which produces the shading of the ink line. The character of the ink line as seen under high magnification reflects this fluent motion; it is seen to be devoid of any signs of hesitancy, uncertainty of direction, or abrupt and inexplicable changes in width or ink content. The " line quality " which is the term used to sum up these features is said to be good.

Simulated forgery

Contrast with this the writing of a forgery. Signatures may be copied in one of two ways. The first involves the careful study of a genuine specimen so as to obtain a mental picture of the letter design and spacing employed. This is followed by many practice attempts to reproduce the signature from memory. The results are on each occasion compared with the genuine specimen and any shortcomings noted. This process is continued until the forger feels that he is capable of writing a successful forgery on the required document.

Such a forgery is termed a " simulated " forgery, and in the hands of an expert the method results in the production of the most dangerous forgeries from the standpoint of detection. Fortunately the number of persons who can effect a good simulated forgery is limited because no one can make even a passable attempt at a simulated forgery of the signature of a better penman than himself.

It is worthy of note that a number of perpetrators of simulated forgeries have been detected by their curious habit of leaving about their practice attempts as well as the blotting paper they have used.

Traced forgery

The alternative and by far the most common method of forging a signature is to employ some variation of the tracing procedure used by artists and draughtsmen. Tracing is used by those who are not sufficiently confident of their ability to write a convincing simulated forgery as tracing can be counted upon to furnish a forgery which will bear a very close resemblance to the genuine signature used as a copy.

The simplest way of tracing a signature is to hold a document bearing a genuine signature against a window, or on a sheet of glass strongly illuminated from below, and then to adjust the position of the sheet of paper which is to bear the forgery so the outline of the genuine signature can be seen through the paper in the required position. The forgery is completed by inking-in the outline of the genuine signature.

For some obscure reason, the majority of forgers prefer to trace the outline with the signature held upside down. It is difficult to account for this unless it is thought that by so doing, the attention can be directed to the following of the outline rather than to the writing of a recognisable word in which their own handwriting characteristics may be revealed.

The simple method described has the great merit that no guide line appears on the document to suggest at a later date that the signature is a traced forgery but circumstances arise where it cannot be used.

Where direct tracing is ruled out, recourse must be made to the use of carbon paper or, if carbon paper is not available, one of the various devices familiar to artists and draughtsmen, to cause a faint outline of the required signature to appear at the desired place on the document. The completion of the forgery merely involves the careful inking-in of this outline.

The majority of traced forgeries are left in this state and no attempt is made to erase the guide line. This is probably because it is thought that the guide line will have been completely covered up by the ink line. This is wishful thinking. It is a most difficult task to ink-in an outline completely, for on microscopic examination, part of it will usually be found to be uncovered at the ends of strokes and on curves. Even if the inking-in has been done thoroughly, the guide line can often be seen intermingled with the ink. Finally, a photograph taken with infra-red will often cut out the whole of the superimposed ink line and reveal the guide line in its entirety, as carbon, unlike most inks, is opaque to infra-red rays.

It is a dangerous practice for a forger to use an eraser in an effort to clean up a traced forgery because of the disturbance this causes to the surface of the paper. There is nothing so likely to cause suspicion as signs of abrasion in the immediate neighbourhood of a signature.

The presence of a pencilled outline associated with a signature is by no means a positive indication that it is a traced forgery. It is the unfortunate habit of many legal gentlemen to pencil-in the name of a client at the place where the document has to be signed. Some stupid signatories then proceed to ink-in this outline instead of signing in the normal way. Matters are made worse by the cleaning-up of the document when it is received back after signing. In any proceedings such a document could be counted on to cause some confusion as it would bear a genuine " signature " with many of the signs of a traced forgery.

Examination of the traced forgery

Any signature suspected of being a traced forgery should be examined with a lens in a good light for the presence of a double line in the neighbourhood of curves and for failure to trace up to the ends of strokes.

This is followed by the examination of the surface of the paper by glancing light for signs of a rubber having been used or for the presence of a groove which sometimes remains when the guide line itself has been erased.

This preliminary examination is supplemented by examination with a microscope for the presence of foreign matter associated with the ink line, but here some experience is necessary because dust in the ink may be mistaken for the graphite of a pencil. Finally an infra-red photograph should be taken.

Whilst the foregoing physical examination of a signature will often disclose sufficient evidence to brand it as spurious, it will fail where no guide line has been employed as well as in those cases where a careful and thorough erasure has been carried out with a signature written on rough surfaced paper. This physical examination must be supplemented by tests on the handwriting of the signature.

The very perfection of the form of a carefully traced forgery may prove to be its undoing for experience has shown that although a group of genuine signatures of one person may have much in common, no two which are perfect replicas of each other are likely to be encountered. Even a skilled penman finds it an impossible task deliberately to write two signatures of more than a few letters which are so similar that no differences can be shown to exist.

It often happens that when a traced forgery is being challenged, the genuine signature from which it was traced is put in evidence to demonstrate how close is the resemblance of the forgery to a genuine signature. This is a dangerous practice for the forger for it permits of the demonstration of a similarity which is explicable only on the grounds of tracing.

It often happens that a single genuine signature is used as the basis of up to as many as a dozen or so traced forgeries. These cases give little difficulty for, whilst the odds against two genuine signatures being replicas are very great, the chances of a number of replicas being produced by any process other than tracing are infinitesimally small.

The most convincing demonstration that tracings are involved is to prepare an enlarged photograph of one signature and transparencies of the others. The transparencies can be placed, one by one over the photograph so that the exact degree of correspondence may be seen.

Unfortunately, it may happen that but one traced forgery is produced and the genuine signature from which it was traced is not available. If, at the same time there is no evidence of any guide line, the problem has to be dealt with as though a simulated forgery is concerned.

It is obvious from the method by which they are produced, that quite a different approach is called for when a simulated forgery is being investigated.

It has already been mentioned that the genuine signature of a practised writer is written fluently and without thought as to the exact form it is to take, because of the writer's complete familiarity with the task he is accomplishing. In copying an outline or reproducing a form from memory, there can be no swift, carefree and fluent movement of the pen. The forger has to ensure that the penpoint is reproducing the letter formations he has memorised or is observing with half his attention whilst giving the remainder to the control of the pen.

There can be no swift and sweeping movement of the pen, but a slow and careful motion which is the product of care from the moment the pen is applied to the paper until it is finally lifted from its surface, for the forger not only has to copy the writing of another, but must suppress his own handwriting instincts. What is finally committed to paper, be it either a traced or simulated forgery, is not a piece of " handwriting " but a careful and painstaking " drawing " of the handwriting of another person.

In spite of this, many a simulated forgery written by an expert may at first sight appear to present an authentic appearance but this is only because the eye is apt to judge handwriting by its general appearance or what might be termed its " pictorial effect."

If, however, a photographic enlargement of a forgery is compared with that of a genuine signature, the result is often very striking. However much a genuine signature is enlarged, the curved strokes which comprise the handwriting lose none of their effect because, as they have been written with a fluent movement, the curvature still appears to be smooth and even throughout. On the other hand, with an enlarged picture of a forgery, the eye has the opportunity to study each stroke and curve as an individual formation, when the patchwork appearance of the whole can be fully appreciated. The constant changes in direction made by the pen point as it is forced along, with constant correction, the path the forger deems to be necessary, can clearly be seen when there is sufficient magnification. The resultant abrupt changes in both the width and the depth of the ink line, as the pen momentarily pauses while the next move is being contemplated, results in bad line quality. It is this bad line quality which can only be appreciated by visual comparison which is one of the most revealing characteristics of a forgery whether it be traced or simulated for no ink line can present an even appearance on high magnification unless it has been evenly and fluently written.

The appearance of the line endings of a forgery is often very significant. Instead of the pointed ends characteristic of many genuine signatures because of the motion of the pen before and after it touches the paper, the ends of the majority of forgeries are found to be blunt and sometimes club shaped because of the absence of any motion before the pen touches the paper.

Whilst most genuine signatures are written in one continuous stroke with neither pen lifts nor marked hesitations, this is not the case with a forgery, as the forger has usually to stop at frequent intervals to take stock of his progress. If a conventional form of nib is used, be it either in an ordinary pen or part of a fountain pen, the places at which any stops or hesitations take place may be determined by the effect of the interrupted motion on the ink line. Unfortunately, if a ball-point pen is used, it is usually impossible to detect these stops and hesitations because of the quite different nature of the line formed by the rotation of the ball.[1] This is one reason why any signature written with a ball-point pen on an important document should be scrutinised with care.

The most exacting critic of any forgery is undoubtedly the forger, who, having studied the genuine signature most carefully, is most aware of the shortcomings of the forgery. This being so, the majority of forgers cannot resist the temptation to attempt to improve on their handiwork. This " improvement " invariably takes the form of delicate retouching to improve outlines and smooth off curves. Retouching may sometimes be found in genuine signatures but invariably it will be found that the object of the retouching has been to improve legibility. Such retouching is done with one or two sweeping strokes about whose presence there can be no doubt as it is apparent to the naked eye. On the other hand, the retouching made by a forger is unobtrusive, made up of many delicate strokes added to the signature, not with the object of improving legibility but solely to modify the letter design.

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[1] See " The Ball-Point Pen " [1955] Crim.L.R. 544.

The demonstration of the presence of this fine retouching is one of the most convincing ways of demonstrating the falseness of a questioned signature whether it be simulated or traced.

If a ball-point pen is used, it will prove impossible to detect the presence of delicate retouching as no indication as to the relative order of the strokes which make up the signature can be obtained by any examination. Under the microscope, a line made with a ball-point pen resembles an irregular cinder track about which little may be determined with any certainty.

It will have become apparent that the majority of the foregoing considerations apply only to the signatures of practised writers. The signature of a person unaccustomed to the use of the pen is not only variable in the extreme, but is generally written with a slow laborious action which is very reminiscent of that employed by the forger. As this is the case, it may well prove impossible to determine whether such a signature is true or false. The only consolation is that the signatures of such persons are rarely worth forging. Unfortunately nearly everybody is nowadays called upon to sign a multitude of documents many of which are in the form of receipts for payments out of public funds. All too often these are either lost or stolen, or if genuinely signed and cashed, are repudiated at a later date in the hope of receiving payment once more. Whilst a certain percentage of these cases can be cleared up, so many have to be left unresolved that a good case may be made for the use of finger prints rather than scrawled and practically illegible signatures on receipts for payments from public funds.

All the Circumstances of the Case

By Charles E. Dyer, *Inspector of Police*

"Dangerous driving," in its legal sense, is a term which does not lend itself to simple definition. It remains an offence entirely dependent upon the facts available which must vary in every case; and reference to the relative section of the Road Traffic Act, 1930, does not greatly assist. Section 11 does no more than name the offence and specify a certain number of the necessary ingredients.

This somewhat vague or abstract quality about dangerous driving is what causes difficulty when the Bench are asked to decide whether the facts as presented amount to the offence. As with some other traffic offences they are faced with a complete reversal of the usual situation. In the majority of criminal cases the point at issue is not whether the offence in fact occurred but whether the person accused was the perpetrator. In dangerous driving it is rarely denied that the accused was the perpetrator, but the fact that his conduct amounted to the offence is strenuously contested. It is for this reason that pleas of guilty to dangerous driving charges are comparatively rare.

On what then does the court base its decision whether dangerous driving has been committed? This can only be answered by reference to section 11. To simplify matters let us disregard the words " recklessly " and " at a speed " for they form but a variation of the offence.

" If any person drives a motor-vehicle on a road . . . in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition, and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, he shall be liable . . . etc."

Analysing this, we may say that driving becomes dangerous to the public in certain circumstances. Included among these circumstances may be (1) the nature, condition, and use of the road; (2) the amount of traffic on the road, and the amount of traffic which might reasonably be expected to be on the road. The important word here is clearly " including," for this suggests that whilst " the nature of the road," etc., shall be included in the circumstances of the case, other undefined factors are to be considered. In practice, these other factors almost invariably include the allegations made against the accused driver. In other words, the facts of his driving conduct and other evidence which, in the opinion of the prosecution, tend to suggest that he was driving dangerously.

Can it be said that the courts, following this practice, are presented with all the facts " having regard to all the circumstances of the case "? It is not suggested that such cases are not fairly tried upon the evidence made available. Experience teaches that all the facts presented are weighed carefully before a decision is reached, but are there not many more facts relating to this class of offence which are not presented to the court and therefore not given due consideration?

Are such facts as these ever considered? The skill and knowledge of driving possessed by the accused; the class of vehicle being driven by the accused and its power and performance; the age and physical condition of the accused; his mental attitude in relation to driving; the varying physiological effects upon a driver in emergency.

These are but a few of the factors which could have considerable bearing upon culpability in a dangerous driving prosecution. They are "other circumstances of the case." Yet such factors are rarely presented to the court. Is it not apparent that armed with such information the bench would be enabled more easily to apportion the blame? To decide whether lack of skill or experience, for example, should be considered an alleviating factor? Or whether evidence of skill and experience in driving justifies a heavier penalty according to the circumstances?

These and many other possibilities arise and some of these factors are now considered in greater detail.

Knowledge and ability

At the conclusion of a dangerous driving prosecution it is a popular practice for the defending counsel to plead that his client has driven for a great number of years and has been free from accidents. This information is presented to the court with the obvious intention of securing mitigation. Whether such information is accepted by the bench as justifying mitigation is known only to them, but the impression gained from the penalties frequently imposed is that it is so accepted. With every respect to our courts of justice, this is surely wrong. It should be apparent that the longer period a man has driven the greater his experience should be, and presumably the higher the degree of proficiency to be expected from him. If a man has driven for a number of years and is a skilled and experienced driver, surely he should be more severely punished than an unskilled and inexperienced driver when convicted upon a similar set of facts. The skilled driver should know better—his experience should tell him. His knowledge and ability as a driver should prevent him offending.

It would appear to be more logical for the prosecution to submit that an accused driver is one of considerable experience, if this is the case, and for the court to increase the penalty by virtue of that fact. The present policy, which applies in reverse, is plainly illogical.

When the facts of the case indicate beyond any reasonable doubt that a driver of some skill and experience has driven in a manner dangerous to the public, such a driver merits no sympathy from the court, and the imposition of a heavy penalty is clearly justified. But it must be emphasised that such a case must be proved beyond any reasonable doubt, for there is another aspect of this problem which must in no circumstances be overlooked. It is this: every day on the roads of this country acts of driving are performed by skilled and experienced drivers which, by reason of their skill, are completely safe. Take, for example, the driver who, when about to overtake a slower-moving vehicle, is faced by an oncoming vehicle, and uses the judgment gained from his long experience in deciding that it is completely safe to do so. Experience has taught him accurately to judge the speed of other vehicles in relation to his own, it has taught him the efficient use of his gears and " acceleration sense." He knows that he can overtake with safety. But if an inexperienced and less skilled driver is placed in the same position, his hesitancy, lack of deliberation and general incompetence in the same circumstances can be highly dangerous. Yet it is unfortunately true that on the evidence of inexperienced and non-expert witnesses both these drivers could be convicted of dangerous driving. Here, again, it would appear that without precise knowledge of the degree of skill achieved by an accused driver a complete cognisance of all the circumstances of the case cannot be gained by the court.

Driving ability, or rather the lack of it, is in one respect recognised by the legislators. Current regulations certainly presume learner drivers to be incompetent and place upon them the requirement to observe certain conditions when driving upon a road. Such conditions apply until the learner has passed the Ministry of Transport driving test. Until then he is apparently not considered to be a driver with ability. Thus an anomalous situation arises. The learner is recognised as incompetent and unskilled, but should such incompetency lead him to commit a driving offence, he stands an equal chance of conviction with a driver of long experience and a high degree of skill (*McCrone* v. *Riding* [1938] 1 All E.R. 157). Is not this a case, in fairness, where the lack of experience on the part of the accused should be considered in mitigation when considering guilt or penalty?

These points surely stress that an assessment of the standard of knowledge and ability at driving possessed by an accused driver is of great importance to the court when culpability for dangerous driving is being considered. It is plain that such an assessment would be of assistance to the court in three main respects: it would ensure that the driver of long experience, who should know better, does not escape just punishment; that the required element of danger did in fact exist having regard to the standard of driving skill possessed by the accused driver; that the inexperienced or the learner driver is not punished for conduct for which he cannot fairly be blamed.

Motor-vehicles—power and performance

When a driver of skill and experience has under his control a motor-vehicle of high power and efficiency, it is often possible for him to perform feats of driving with complete safety which, in other circumstances, would be most ill-advised.

Thus, a skilled driver, using his acquired sense of timing and judgment of relative speed, overtakes a slower moving vehicle in the face of an oncoming one. The vehicle driven by him is one of high power and efficiency, and he can estimate to a fraction the rate at which it is capable of acceleration. He judges that such a rate of acceleration will leave a considerable margin between his car and the oncoming vehicle. He also knows that positive steering and a high degree of stability, due to efficient suspension and shock-absorbing, will enable him to maintain a steady and consistent course at high speed.

Suppose, however, that the car being driven in the same situation is one of lower power with a comparatively slow rate of acceleration and a poor standard of general efficiency. The driver of this vehicle who attempts to overtake in the same fashion will have no margin of safety and his vehicle will be unstable and difficult to control.

It must be apparent that one cannot drive in the same manner with a popular eight-horse-power saloon as one can with a modern three-litre car in first class condition. The high-powered car is built for speed and stability at speed; the lower-powered car is not so built.

To avoid misunderstanding it must be added that it is not suggested that at no time is the driver of a high-powered car guilty of dangerous driving; it is, indeed, too frequently the case that drivers of such vehicles do offend. But the fact that the skilled and experienced driver can perform feats of driving with an efficient car which could not be safely attempted had he the control of a less efficient vehicle must be appreciated if justice is to be done to the driver.

Cases of dangerous driving are often heard in the courts where a knowledge of the relative power and performance of the motor-vehicles concerned would be of much significance. Beyond an occasional testimony respecting the brakes or steering, it is rare indeed that one hears such evidence introduced. It is even rarer to hear a technical description contributed which would indicate to the court just what may, or may not, be done with a certain class of motor-vehicle. It is not in all cases that such evidence would be of value, but there are many where this information could have a bearing upon the results.

Age and physical condition

There has existed for many years a strong measure of public opinion favouring the suggestion that on reaching a certain age drivers of motor-vehicles should be subjected to an annual medical examination. Whether such a plan should be adopted generally is a controversial point outside the scope of this article, but it must be admitted that evidence of the physical condition of certain persons when charged with dangerous driving would be most advantageous.

It is an indisputable fact that from early middle age onwards a slow deterioration of the human body takes place. There comes a time, which varies with the individual, when a feebleness asserts itself which is quite beyond the control of the subject—a time when there is a decided falling off in mental alertness, and when muscular reactions are slower and less reliable.

There can be few police officers who are not familiar with the charming but misguided old gentleman who simply "totters" around in his car; never drives at more than 25 miles per hour, and shows every sign of intense concentration in this endeavour. Provided such a gentleman completes the appropriate form for a driving licence (mistakenly or otherwise) to the effect that he does not suffer from certain diseases or disabilities, there exists no legal reason why he should not drive motor-vehicles on a road.

Let us imagine that such a person is before the court charged with dangerous driving. Is it not most likely that his defending counsel will tactfully omit all reference to the age or physical condition of his client? He will describe him undoubtedly as a very careful driver who "never does more than 25 miles per hour." Although the law does not recognise old age as a disqualification from driving, the court has this power if they convict. Knowing this, the defending counsel wisely takes no chances.

It cannot be denied that there are many drivers on the roads, both young and old, who are a potential danger due to their state of health or mental condition. Whether a stricter check should be made upon such persons is, as already stated, not within the scope of this article, but it would appear that when they do come within the reach of the law by committing a driving offence the court should have full knowledge of their physical or mental state.

Mental attitude and physiological effects

For convenience these two subjects in relation to driving are grouped under the same heading. In practice, however, they are subjects much divorced although equally important. We deal first with "Mental Attitude."

Experts on the causes of road accidents, after considerable research, have evolved the theory that certain road users are what is termed "Accident Prone." They are persons who are more liable than others to be the cause of, or the victims of, road accidents. Individuals of this type are to be found, we are told, among every class of road user, pedestrian, cyclist and motorist alike, and the principal cause of this unfortunate condition can be summed up in three words—lack of concentration. It is lack of concentration that causes the pedestrian to step from the footpath in front of an oncoming vehicle; that causes the cyclist to swerve suddenly across the front of a car; that causes the motorist to perform many of the careless and thoughtless acts for which he is often responsible.

The road safety authorities are attempting to correct this human imperfection by propaganda and adult education. Whether they can succeed in this worthy task remains to be seen, but it is evident that some people have a much greater power of concentration than others. This is a fact which must be accepted.

Just how important this ability to concentrate becomes in relation to our subject—dangerous driving—must be obvious. The mental attitude of a driver under modern traffic conditions must be one of constant concentration upon the job in hand. It is when he relaxes his concentration for one moment that the damage is done. There can be few drivers indeed who could honestly say that they can concentrate 100 per cent. whilst driving a motor-vehicle, for this requires considerable mental effort. And the degree to which this mental effort can be maintained varies with the individual.

This leads to an important point: the ability to concentrate is capable of assessment by a competent observer. One can well imagine the value it would be to the bench in a dangerous driving prosecution to know whether the accused is one subject to mental aberration or whether he is mentally alert with a highly developed power to concentrate upon his driving.

This useful and valuable information could be made available to the court today if the opportunity existed to obtain it. The machinery for supplying such information is already there, as will later be explained.

To deal now with physiological effects: When the driver of a motor-vehicle is faced with an emergency requiring him to take some immediate action in avoidance of danger he is the subject of a physiological process termed the "Latent Period," which may be described as the period of time which elapses between the perception of danger and the consequent muscular action. In other words, a driver who is suddenly confronted with a situation requiring such action as the application of the brakes or a turn of the steering is unable to perform this action immediately. He can only do so after the expiry of his latent period.

The latent period varies with the individual, but in the majority of people approximates to three-fifths of a second. In a minority of people, and principally those over the age of 45 years, the latent period is of longer duration, in some cases approaching a second.

It is not difficult to appreciate that a motor-vehicle moving fast will travel a considerable distance during this latent period. And it is not difficult also to understand that the duration of the latent period can make all the difference between a road accident and a safe journey.

Here, again, is a subject, knowledge of which could, in many cases, have an effect upon the findings in a dangerous driving prosecution. As many readers will be aware, apparatus for determining the duration of the latent period in an individual is in existence, and could be utilised in this connection.

Providing the necessary information

Until now we have dealt exclusively with the offence of driving motor-vehicles in a manner dangerous to the public. It is apparent, however, that nothing that has been mentioned could not equally well be applied to the less serious offences against section 12 of the Road Traffic Act, 1930, namely, driving without due care and attention, or without reasonable consideration for other users of the road; and to go from one extreme to another, the value of the information described in a prosecution for motoring manslaughter cannot be over-stressed. The gravity of this offence, and the consequent penalty on conviction requires that every possible type of evidence should be made available in fairness to the accused. If it is accepted that many of the factors mentioned are of importance in a prosecution for dangerous driving, it must follow that they become *vital* in a prosecution for the crime of manslaughter.

Having endeavoured to establish that certain factors would be of value to the courts, it is now necessary to decide in what manner the evidence of them could be obtained.

During the past twenty years a great change has taken place in the attitude of the courts to the admission of evidence from medico-forensic and other scientific and technical experts. Particularly in acquisitive and sexual crimes has it become the practice to take every advantage of all forms of testimony which would identify the accused with the perpetrator or reveal his state of mind at the time of the offence.

What means could be adopted to obtain expert evidence of the type required for a dangerous driving prosecution? It must be admitted that very little of the evidence proposed could be obtained under the existing powers possessed by the courts and the police. But accused drivers and their vehicles could be made available for examination by experts if greater powers were granted to both authorities.

It could be made possible for the bench, when they consider it advisable, to adjourn the hearing of a dangerous driving case, and make an order upon the accused driver to present himself either for medical or driving examination by a qualified examiner; or similarly to present his motor-vehicle for examination by a competent engineer.

Whilst there can be no doubt of the existence of people well qualified to examine a driver in respect of his physical or mental condition, where, it may be asked, is there a competent authority to judge a driver upon his knowledge and ability at driving, his powers of concentration, and to assess his latent period?

The answer to these questions is to be found in the Police Advanced Driving Schools. Here it is possible for a driver to be examined by a thoroughly competent and experienced examiner who has made the science of driving a study. The court could send offenders to such a school, there they would be efficiently examined and thoroughly tested, following which expert evidence of the results will be available to the courts.

In these days, when the tragedy of road accidents is uppermost in our minds, it becomes more than ever necessary to use every possible means, including the scientific and the technical, to attack that anti-social being—the dangerous driver. There should be no limit to the endeavour made to obtain the evidence which goes to prove "all the circumstances of the case."

The Magistrates' Association

By BARTHA DE BLANK, B.COM., *General Secretary*

The Annual General Meeting of The Magistrates' Association was held in London on Thursday and Friday, October 20 and 21.

At the first meeting Lord Pakenham, who has recently conducted with expert colleagues an inquiry into the causes of crime for the Nuffield Foundation, gave an address on "Crime" in which, having drawn attention to the inadequacy of our criminal statistics, he dealt with some of the factors that may cause a man to become a criminal. Among the points covered were the importance of the family and the connection between broken homes and crime, the damage caused by the temporary or permanent separation of a young child from its mother, or by lack of parental affection, the distinction between inherited or acquired propensity to crime and the impact of adverse circumstances such as war, and the need for security as an element in healthy growth. He accepted the view that there is a pathological element in many crimes, and while he believed that human law and human penalties in accordance with human justice were indispensable conditions of civilised living, yet it became more and more difficult to believe in the absolute rectitude of human justice as it became less and less likely that precisely the right people were in prison. Lord Pakenham then dealt briefly with the justification for punishment under the headings of retribution, deterrence and reform, and the public demand for a connection between demerit and penalty. He said "the clear impossibility of equating human and divine justice does not mean discarding the attempt to make the human justice give effect to the divine. It does mean accepting a new and altogether alarmingly enhanced responsibility for the welfare of those on whom we inflict mundane punishment." He closed by pleading for a new approach to penal reform in practice, for the conversion of the prison service into a social service, for an allocation of national resources to this work on an unprecedented scale, and for a new recognition of the sympathy, imagination and sacrifice required if a real impression were to be made on prisoners.

On Friday morning the Chairman moved the adoption of the Annual Report. In the debate which followed, a resolution was carried by 256 votes to 91, expressing disapproval of the Council's recommendation, in its memorandum of evidence to the Departmental Committee on Homosexual Offences and Prostitution, that homosexual conduct in private between consenting adults of thirty years or more should no longer be a criminal offence, except in regard to mentally defective persons. With this exception the Report was adopted.

A special committee of the Council has for the last two years been redrafting the constitution of the Association, and the revised constitution was submitted to the Annual General Meeting. The principal changes involved concern the composition of the Council which is to be elected on a purely regional basis. Greater emphasis is laid on branches, which it is hoped will make a useful contribution to the work of the Association. The new constitution, with minor drafting amendments, was adopted by an overwhelming majority.

In the afternoon the Home Secretary gave an address, and dealt in his opening remarks with some of the criticisms made by Lord Pakenham of the criminal statistics. He mentioned the Howard League's suggestion that some alternative should be found to the short term of imprisonment, which matter was to be discussed by the Advisory Council on the Treatment of Offenders, and suggested that the Association might care to express to the Council its views on the question.

Major Lloyd-George drew attention to the large and increasing number of those imprisoned for non-payment of fines, and stressed the need to consider all the circumstances before imprisonment was used as the sanction for the enforcement of fines and maintenance orders.

He then spoke of the increasing number of road accidents and the contribution magistrates' courts could make towards a reduction of this grave problem. He drew particular attention to the small number of disqualifications and the low average fines for offences of speeding and dangerous and careless driving.

As regards the Report of the Departmental Committee on the Summary Trial of Minor Offences, the Home Secretary said that the recommendations which involved far-reaching changes in practice and procedure required detailed and careful examination, and he was not yet able to announce the Government's decision on them. [See H.C. Debates, Vol. 545, col. *79*; October 31, 1955.]

Major Lloyd-George dealt in the latter part of his speech with the need for economy in building new court houses, with the question of the appointment and removal of justices' clerks, particularly in regard to grouping of clerkships, and with the alteration of boundaries of petty sessional divisions. He emphasised again the point made by Lord Lloyd the previous year of the need for harmonious relations between magistrates' courts committees and the local benches and their clerks and for real consultation between them on matters in which both were concerned.

After the Home Secretary's speech the rest of the meeting was devoted to the discussion of resolutions submitted. The following resolution was adopted by 189 votes to 148—

> *Abortion.*—That the law regarding abortion should be amended and that there should be added to section fifty-eight of the Offences against the Person Act, 1861 (which makes it a felony to administer drugs or use instruments to procure abortion), the following proviso—
>
> " Provided that—
>
> (a) no registered medical practitioner shall be found guilty of an offence under this section unless it is proved that the act charged was not done in good faith for the purpose of preserving the life of the mother ;
>
> (b) no registered medical practitioner who acts with the concurring opinion of a second registered medical practitioner shall be found guilty of an offence under this section unless it is proved that the act charged was not done in good faith: —
>
> (i) for the purpose of preventing serious injury to the mother in body or health, or
>
> (ii) in the belief that there was grave risk of the child being born grossly deformed or lacking normal physical or mental faculties or incapable of normal physical or mental development."

The following resolution was carried without opposition—

> *Neglectful Mothers.*—That this Association is of the opinion that mothers convicted of neglect of their children are generally more in need of training than punishment, and that, therefore, they can more usefully be dealt with by a probation order with a condition of residence at one of the training homes specially intended for such cases rather than by a prison sentence.

The following resolution was defeated—

> *Removal of Disqualification.*—That this Association views with misgiving the growing practice of removing on application after six months the statutory twelve months' disqualification imposed on motorists convicted of driving under the influence of drink or drugs or of driving without a policy of insurance, and is of the opinion that the law should be amended so that such applications should only be possible in very exceptional circumstances.

Certain other resolutions for which time was not available were referred to the council for consideration.

Practice and Procedure

Quarter Sessions

Application for removal of disqualification for driving

A curious point has been raised. If a magistrates' court imposes a disqualification of, say, three months and on appeal to quarter sessions the period is extended to twelve months, can the person disqualified go back to the magistrates' court and ask for the restoration of his licence at any time after the first six months?

The Road Traffic Act, 1930, s. 7 (3), which governs the matter, provides that a person who has been disqualified may apply to the "court before which he was convicted or by which the order was made" to remove the disqualification. The reference to "conviction" or "order" covers both an automatic disqualification on conviction and disqualification by order of the court, and does not imply that more than one court may be concerned with the matter. In the case being considered the question is which court made the order?

Section 86 of the Magistrates' Courts Act, 1952, provides that any decision of quarter sessions on an appeal from a magistrates' court may, without prejudice to the power of quarter sessions to enforce the decision, be enforced by any process in the magistrates' court which it could have issued if it had decided the case as quarter sessions decided it. This, of course, is not directly in point. An application to remove a disqualification is not a process to enforce a decision but is, in effect, an application to vary it. Little light is thrown on the matter by the note on page 2048 of the 1955 edition of Stone which says "An order of disqualification by quarter sessions on an appeal against a conviction will have the same effect as if made by a court of summary jurisdiction." This view is based on section 31 (1) (vii) of the Summary Jurisdiction Act, 1879, now replaced by the above-quoted section 86 of the Magistrates' Courts Act, 1952.

There can be no doubt that an application can be made to quarter sessions, but can it also be made to the magistrates' court from which the appeal came? The point is not entirely free from doubt but on principle it is obviously right that an application to remove a disqualification should be made to the court which imposed it. In an Assize case quoted at 105 J.P.N. 198 under the heading "Removal of motorist's disqualification," Humphreys J.

adjourned such an application so that the judge who imposed the disqualification could deal with it, saying that " the decision might involve the reversal by one judge of the sentence of another judge." He referred to the desirability at quarter sessions or a magistrates' court of the same chairman or magistrates dealing with the matter on both occasions. With this guidance it would obviously be inappropriate for a magistrates' court to entertain an application to remove a disqualification imposed on appeal at quarter sessions even if it has the jurisdiction to do so.—[Brigadier A. C. C. WILLWAY, C.B., C.B.E., T.D., D.L., Chairman, Surrey Quarter Sessions.]

Summary Justice

Children

Neglect. Parents leaving nine-month-old baby in a car on a cushion under the front passenger seat for three-quarters of an hour ; granted absolute discharge, ordered to pay £7 4s. 11d. costs ; Musgrave: Weston-super-Mare Magistrates' Court (*Manchester Guardian*, October 22).

Theft. Boy, aged thirteen, stealing apples from a garden ; fined 10s., told to pay it out of his pocket money: Willesden Juvenile Court (*Evening Standard*, October 12).

Drugs

Unlawful possession. Being in unauthorised possession of five and a half ounces of Indian hemp ; sentenced to three months' imprisonment ; Radix: Liverpool Magistrates' Court (*Liverpool Evening Express*, October 31).

Unlawful possession. Four men in unauthorised possession of hemp ; each sentenced to two months' imprisonment ; Shafi, Hossian, Jabbr, Ramzan: Liverpool Magistrates' Court (*Liverpool Evening Express*, October 13).

Fire

Chimney. Allowing chimney at his home to be on fire ; fined 10s. ; Hodgson: Wakefield City Magistrates' Court (*Wakefield Express*, October 3).

Firearms, explosives and offensive weapons

Offensive weapon. Seaman having a spring clasp knife in his possession without lawful excuse ; fined £10, ordered to pay £1 1s. costs ; Mohamed: Liverpool City Magistrates' Court (*Liverpool Express*, October 31).

Fireworks. Youth, aged twenty, letting off a firework in a cinema; maximum fine of £5 imposed; Cunningham: Birmingham Magistrates' Court (*Birmingham Mail,* October 17).

Fireworks. Seven boys setting off "bangers" in the street; each fined £1: Birmingham Magistrates' Court (*Birmingham Mail,* October 17).

Food and drugs

Milk. Selling a pint of milk to which water had been added; fined £10, ordered to pay £4 4s. costs; Crowsnest Dairies, Ltd.: Derby County Magistrates' Court (*Derby Evening Telegraph,* October 15).

Milk. Delivering bottle of milk with playing card inside it; fined £5, ordered to pay 10s. 6d. costs; United Dairies: Hendon Magistrates' Court (*Evening Standard,* October 17).

Larceny, fraud, etc.

Sentence reduced. Stealing two penny-worth of glycerine; sentence of six months' imprisonment quashed on appeal and fine of 1s. substituted; Richardson: Bedfordshire Quarter Sessions Appeals Committee (*Evening Standard,* October 17).

Electricity. Fraudulently abstracting electricity by taking front off meter and putting a shilling through, then taking it back; sentenced to four months' imprisonment; Williams: Wrexham Magistrates' Court (*Liverpool Evening Express,* October 24).

Making a false statement in support of a certificate of naturalisation; fined £2, ordered to pay £2 9s. costs; Campbell: Fairford Magistrates' Court (*Evening Standard,* October 11).

Local by-laws

Rubbish. Sorting over material on New Ferry rubbish tip; fined £2; Jones: Bromborough Magistrates' Court (*Liverpool Evening Express,* October 24, 1955).

National insurance

False pretences. Woman obtaining £650 7s. national assistance benefit by falsely pretending her husband was not a member of the household; sentenced to six months' imprisonment; Falkingham: Leeds Magistrates' Court (*Manchester Guardian,* October 12).

Fraud. Possessing used insurance stamps which had been fraudulently removed and fraudulently affixing the stamps to insurance cards; fined £100, ordered to pay £20 13s. 10d. costs; Morris: Birmingham Magistrates' Court (*Birmingham Mail,* October 25).

Fraud. Fraudulently fixing a national insurance stamp to an insurance card and possessing thirty national insurance stamps which had been removed from other material; fined £50, ordered to pay £8 5s. costs; Berridge: Aldridge Magistrates' Court (*Birmingham Mail*, October 10).

Poison

Selling poison while not registered and selling poison not labelled with the seller's name; fined £4; Houghton: Wimbledon Magistrates' Court (*Evening Standard*, October 19).

Probation, conditional discharge

Conditional discharge. Condition of discharge of person convicted of embezzling that he should not spend more than a pound a week on cigarettes; Stanley: Lambeth Magistrates' Court (*Evening Standard*, October 11).

Railways and ships

Children. Three boys, two aged twelve and one thirteen, rolling a lorry wheel on to a railway line; each sent for one months' detention at a remand home and put on probation for two years: Birmingham Juvenile Court (*Manchester Guardian*, October 27).

Trespass. Twenty-one workmen walking across the track under a bridge to catch an early morning train instead of walking over bridge; each fined £1: Portsmouth Magistrates' Court (*Evening Standard*, October 21).

Excessive smoke. Shipping firms allowing vessels to emit an excessive amount of smoke; fined £3 on each summons; William Cooper & Sons, Rea Towing Co., Liverpool Screw Towing and Lighterage Co.: Liverpool City Magistrates' Court (*The Times*, October 20).

Stowaway. Canadian stowing away in ship coming from Montreal; sentenced to twenty-eight days' imprisonment; Smith: Liverpool City Magistrates' Court (*Liverpool Express*, October 13).

Rivers and waterways

Poaching. Frogman using a dagger to take or kill salmon or trout; fined £5; Cameron: Kirkby Lonsdale Magistrates' Court (*Liverpool Daily Despatch*, October 28).

Road traffic

Buses. Using a bus on which the fire extinguisher was not in efficient working order; company owning the bus fined £5, driver fined 10s.; Birmingham and Midland Motor Omnibus Co., Hodges: Walsall Magistrates' Court (*Birmingham Mail*, October 19).

Driving licence. Making a false declaration to obtain a driving licence and using driving licence with intent to deceive; man making application for renewal of a driving licence in the name of his dead father; fined £20, ordered to pay 6s. 9d. costs;

Brennan: Ormskirk County Magistrates' Court (*Liverpool Evening Express*, October 28).

Change of ownership. Failing to notify a change of ownership of a motor-vehicle and aiding and abetting another to drive without an excise licence; fined £3 on the first charge, £1 on the second; Ford: Matlock Magistrates' Court (*Derby Evening Telegraph*, October 14).

Insurance. Driving while not covered by insurance; man failed to have his own name inserted in an insurance cover note after purchasing a motor van; fined £5; disqualified from driving for twelve months; Jones: Birkenhead Magistrates' Court (*Liverpool Evening Express*, October 25).

Defective car. Driving car in a dangerous condition, with defective brakes and no warning instrument; last day car was on the road; fined £3; Maddocks: Hendon Magistrates' Court (*Evening Standard*, October 20).

Having inefficient brakes, not having an excise licence, not being insured and not having driving licence; defendant had just bought car and was driving it home when he had an accident; fined £2 on each of the first two charges and £1 on each of the other two; Parsons: Matlock Magistrates' Court (*Derby Evening Telegraph*, October 14).

Silencer. Using a car with a defective silencer; fined £3; Staines-Dickerson: Hendon Magistrates' Court (*Evening Standard*, October 10).

Dangerous load. Having insecure load on a pick-up truck; truck carrying a load of timber, one lath hit bus smashing window of driver's cab; fined £2; Travers: Notts County Magistrates' Court (*Derby Evening Telegraph*, October 11).

Parking. Bus driver parking bus at stop in a position likely to cause danger to other road users; fined 10s.; Dudley: Derby Borough Magistrates' Court (*Derby Evening Telegraph*, October 13).

Drunk in charge of a bicycle; fined £1; Rutter: Birkenhead Magistrates' Court (*Liverpool Evening Express*, October 24).

Pedestrian crossing. Schoolboy, aged sixteen, riding a motorcycle failing to give precedence to a pedestrian on a zebra crossing; fined £1 10s.: Wimbledon Juvenile Court (*Evening Standard*, October 25).

Suicide

Attempted suicide. Man who had attempted suicide refusing to return home or undergo treatment; sentenced to two months' imprisonment; Ferguson: Stratford-upon-Avon Magistrates' Court (*Birmingham Mail*, October 21).

Case and Comment

The reports of cases to which initials are appended hereunder have been specially prepared for *The Criminal Law Review* by the following reporters:—

HENRY PALMER, *Barrister-at-Law.*
J. D. PENNINGTON, *Barrister-at-Law.*

Abortion—*Attempt—impossibility—intent*

R. *v.* SPICER [1] (Dorchester Assizes: Finnemore J.: October 13, 1955).

S., a secondhand clothes' dealer, was asked by a woman if he could help her out of " a spot of trouble " when she was " two or three months gone." He said he would see what he could do, and as a result she visited him in his shop. He inserted two fingers into the vagina, touching the womb, and then told her that he thought he had " turned it." Ten days later she suffered a miscarriage. Expert evidence was called to show both that these acts did not cause this miscarriage, and that such acts could not cause any miscarriage at that stage in a pregnancy. S. denied that the acts were intended to procure a miscarriage, asserting that he did them " to give her confidence " and " to satisfy my own curiosity."

Finnemore J., summing up, said: " Whether this act does or does not produce a miscarriage does not matter. Whether it was a method which could or could not produce a miscarriage does not matter. The question is, what did he intend to do when he did the acts which were admitted by him in the witness box? "

S. was convicted and sentenced to six months' imprisonment.

[A. R. Tyrrell, LL.B.]

COMMENTARY. Section 58 of the Offences against the Person Act, 1861, provides: " . . . whosoever, with intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony. . . ."

There appears to be no case on an attempt to " use . . . other means " within this section; the main authorities deal with attempts to administer a noxious thing. In *R.* v. *Osborn* (1919) 84 J.P. 63, Rowlatt J. held that the accused could be guilty of an attempt only if the thing was not noxious, but a contrary view had been taken in *R.* v. *Brown* (1899) 63 J.P. 790, a case which is not adequately considered in Archbold, see 33rd ed., 985–90, 1491. See also Glanville Williams, *Criminal Law, The General Part*, § 150.

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[1] For the defendant: *H. E. L. McCreery* (instructed by Charles Lester and Russell, Bournemouth). For the Crown: *T. R. Crawford* (instructed by the Director of Public Prosecutions).

Appeal—*Ground of—" that judgment is against the weight of evidence."*

ALADESURU *v.* THE QUEEN [2] (Judicial Committee of the Privy Council: Lords Tucker and Somervell of Harrow and Mr. L. M. D. de Silva: October 19, 1955) ([1955] 3 W.L.R. 515).

The directors of a bank in Nigeria were convicted of knowingly making and publishing a false balance sheet of the bank. On applying for leave to appeal to the West African Court of Appeal, they stated as a ground of appeal " that judgment is against the weight of evidence." At the hearing of the appeal this ground was struck out and the appeal was dismissed. On appeal to the Judicial Committee by special leave:—

Held, dismissing the appeal, that the phrase " against the weight of evidence " was inaccurate and was not one which could be substituted for the words in the West African Court of Appeal Ordinance (Laws of Nigeria, 1948, c. 229), which followed the language of the English Criminal Appeal Act, 1907, namely, " that the verdict . . . is unreasonable or cannot be supported having regard to the evidence." The position was correctly stated in Archbold's *Criminal Pleading, Evidence and Practice*, 33rd ed., p. 346: " It is not a sufficient ground of appeal to allege that the verdict is against the weight of evidence." [J. D. P.]

Attempt—*Impossibility—abortion.* See R. *v.* SPICER, p. 772, above.

Brothel—*Dwelling divided into flats let separately*

STRATH *v.* FOXON [3] (Q.B., Divisional Court: Lord Goddard C.J., Ormerod and Glyn-Jones JJ.: October 28, 1955) ([1955] 3 W.L.R. 659; [1955] 3 All E.R. 398).

F. was charged under section 13 (3) of the Criminal Law Amendment Act, 1885, as agent of the lessor or landlord, with letting the first, second and third floors of premises for use as a brothel. Access to the three floors was obtained by the same street door and they were reached by the same staircase. A Yale lock divided the third floor from the other two floors, but there was a common user by tenants of a kitchen on the second floor. F., who was employed as a negotiator by a firm of estate agents, let the first and second floor to one tenant and, as a separate letting, the third floor, with the use of the kitchen, to another tenant. Each tenant received a key to the street door and the tenant of the third floor received a key to that flat. At the time of the lettings F. knew both tenants to be prostitutes and that each of them proposed to use her own flat for the purposes of prostitution. The magistrate was of opinion that since there were separate lettings and no common user the premises could not in law constitute a brothel, and he dismissed the information. The prosecutor appealed:—

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[2] For the appellants: *Christopher Shawcross Q.C., David Kemp* (instructed by Rexworthy, Bonser & Wadkin). For the Crown: *J. G. Le Quesne* (instructed by Charles Russell & Co.).

[3] For the prosecutor: *Sebag Shaw* (instructed by Allen & Son). For the defendant: *Fenton Bresler* (instructed by Bernard Samuel Berrick & Co.).

Held, dismissing the appeal, that it was clear from the authorities that premises could not be regarded as a brothel if they were only used by one woman; there was evidence to justify the magistrate's finding that there were two separate lettings of the two flats and, therefore, the court could not interfere with his decision. [J. D. P.]

COMMENTARY. The authority for the proposition that premises are not a brothel if used by one woman is *Singleton* v. *Ellison* [1895] 1 Q.B. 607. This was considered in *Durose* v. *Wilson* (1907) 71 J.P. 263, where there was sufficient evidence for the magistrate to hold that a block of flats was as a whole being used as a brothel, and was followed in *Caldwell* v. *Leech* (1913) 77 J.P. 254, where a woman permitted her sister to use premises for prostitution.

Certiorari—*Reasons for granting—recorder handed police report during trial*

R. *v.* GRIMSBY BOROUGH QUARTER SESSIONS, *ex p.* FULLER[4] (Q.B. Divisional Court: Lord Goddard C.J., Ormerod and Glyn-Jones JJ.: October 18, 1955) ([1955] 3 W.L.R. 563; [1955] 3 All E.R. 300).

During the hearing of an appeal against a summary conviction for an offence under section 4 of the Vagrancy Act, 1824, the clerk of the peace, acting in the interests of the appellant, handed to the recorder a police report drawing his attention to a particular passage favourable to the appellant. The recorder marked the passage, keeping the report beside him during the rest of the hearing. The next line after the passage to which the recorder's attention had been drawn read: "[the appellant] has previously been convicted as follows": and then followed a list of previous convictions. The recorder was also supplied with the proofs of the witnesses. The recorder dismissed the appeal. The appellant who had not put his character in issue, applied for an order of certiorari to quash the decision of the recorder:—

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[4] For the appellant: *J. Malcolm Milne* (instructed by J. H. Milner & Son for James Young, Grimsby). For the clerk of the peace and chief constable: *T. R. Fitzwalter Butler* (instructed by Godfrey Warr & Co. for John Barker, Grimsby).

Held, granting the application, and applying *R.* v. *Camborne Justices, ex p. Pearce* [1954] Crim.L.R. 792, that it was not for every irregularity in the course of a hearing at petty or quarter sessions that certiorari would be granted, but the same rule should be applied as in a case where bias on the part of a justice was alleged, and the court would grant the order where there was a real likelihood of prejudice; accordingly, since it could not be assumed that the recorder did not become aware before he gave his decision that there were previous convictions, certiorari would issue.

Per curiam: Where there is an appeal against conviction, no documents should be placed before the court except the conviction, the notice of appeal and copies of exhibits if they are going to be proved and no objection has been taken as to their admissibility. The safe rule to apply is that on an appeal against a summary conviction nothing should be placed before the appeal committee or the recorder which could not be given to a jury. [J. D. P.]

COMMENTARY. The test to be applied is whether there is a "real likelihood" of prejudice and not a certainty. This was put by Lord O'Brien C.J. in *R.* v. *Queen's County Justices* [1908] 2 Ir.R. 285, 294: "By 'bias' I understand a real likelihood of an operative prejudice, whether conscious or unconscious."

Attention should perhaps be drawn to the fact that the court remarked upon the failure of the recorder to file an affidavit.

Conspiracy—*Conspiracy to steal—conspiracy and larceny in substance same offence*

R. *v.* WEYMOUTH [5] (Court of Criminal Appeal: Lord Goddard C.J., Ormerod and Glyn-Jones JJ.: October 10, 1955).

W. was convicted at Hertfordshire Quarter Sessions of conspiracy to steal and stealing, and was sentenced to two years' imprisonment for the conspiracy and five years' imprisonment for the stealing. The conspiracy charged was that of conspiring with L. and with persons unknown. L. could not be tried at the same time as W. because he was ill, but he was subsequently tried and convicted of larceny. It was ordered that the charge of conspiracy was to remain on the file. W. appealed to the Court of Criminal Appeal against his conviction on the charge of conspiracy:—

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[5] For the appellant: *J. Yahuda* (instructed by the Registrar, Court of Criminal Appeal). The Crown was not represented.

Held, allowing the appeal, that in this case the only manner of proving the conspiracy was by means of the larceny. Therefore, the conspiracy and the larceny were in substance the same offence. The fact that W. was convicted of conspiring with L., who had not been convicted of conspiracy, would not necessarily amount to an objection in law. The conviction for conspiracy would, in the circumstances, be quashed, leaving the sentence of five years' imprisonment for larceny unaffected. [H. P.]

COMMENTARY. The decision here follows that in *R.* v. *Cooper and Compton* (1947) 32 Cr.App.R. 102, where it was stressed that where the proof which it is intended to be submitted to the jury is proof of the commission of the actual crime it is not the proper course to "clog a perfectly simple case of stealing in one or more instances with a count for conspiracy."

See further Archbold, 33rd ed., 1481.

Contempt of Court—*Committal for—person outside the jurisdiction*

O'DONOVAN *v.* O'DONOVAN [6] (Probate, Divorce and Admiralty Division: Wallington J.: July 13, 1955) ([1955] 1 W.L.R. 1086; [1955] 3 All E.R. 278n.).

D. having been divorced by his wife, was granted the custody of the eldest child, the wife being allowed reasonable access to him during school holidays. By an order of court D. was permitted to take the child on a three-months visit to the U.S.A. on his undertaking to return him to school in England. He failed to return the child. The wife applied for an order for committal for contempt of court:—

Held, that notwithstanding that D. was outside the jurisdiction and it was impossible to serve him with notice of the proceedings, an order would be made. [J. D. P.]

COMMENTARY. This case is reported here to illustrate the extent of the power of the court to commit for contempt. It is possible to visualise cases in which the jurisdiction might be applied in relation to criminal cases.

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[6] For the wife: *K. Bruce Campbell, J. B. Gardner* (instructed by Pothecary & Barratt).

Costs—*Appeal to Divisional Court—adjournment pending decision in similar case.* See TURNER & SON *v.* OWEN, p. 779, below.

Court of Criminal Appeal—*Ground of appeal—" that judgment is against the weight of evidence."* See ALADESURU *v.* THE QUEEN, p. 773, above.

Divisional Court—*Appeal to—costs—adjournment pending decision in similar appeal.* See TURNER & SON *v.* OWEN, p. 779, below.

Evidence—*Character in issue—recorder handed police report during trial.* See R. *v.* GRIMSBY BOROUGH QUARTER SESSIONS, *ex p.* FULLER, p. 774, above.

Evidence—*Inadmissible evidence placed before jury.* See R. *v.* COOK, p. 792, below.

Evidence—*Lottery—production of lottery ticket.* See R. *v.* HIBBERD, p. 781, below.

Evidence—*Statement taken down in longhand—impossibility*

LEON *v.* THE QUEEN [7] (Judicial Committee of the Privy Council: Viscount Simonds, Lord Keith of Avonholm and Mr. L. M. D. de Silva: October 17, 1955) (*The Times*, October 18, 1955).

L., a member of the Jamaica House of Representatives was convicted by the resident magistrate on two informations charging her with having made, during the Jamaica general election, a false statement in relation to the personal conduct of one of the candidates for the purpose of affecting his return. On a petition for special leave to appeal from the dismissal of her appeal to the Jamaican Court of Appeal, L. claimed that the magistrate had based his decision largely on the evidence of a police constable who said that he had written down the words complained of in long-hand. It was submitted that it was quite impossible for him to have done so. It was also contended that the solicitor representing the petitioner at the trial was not allowed to cross-examine the police constable.

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[7] For the petitioner: *Cyril Salmon Q.C., Robert Sheaf* (instructed by Hyman Isaacs & Co.). For the Crown: *J. G. Le Quesne* (instructed by Charles Russell & Co.).

Held, that the petition should be dismissed. [J. D. P.]

Food and Drugs—*Food not of the substance demanded—meat content of sausages—standard—analyst's report—attachment to case stated*

MARSTON *v.* LONEY [8] (Q.B., Divisional Court: Lord Goddard C.J., Ormerod and Glyn-Jones J.J.: October 12, 1955) (*The Times,* October 12, 1955).

A butcher on two occasions sold to a purchaser for 2s. 6d. a pound of pork sausages marked "Finest Pork Sausages." On being analysed by the public analyst the sausages were found to contain 52 per cent. of total meat on one occasion and 58·5 per cent. on the other. In the opinion of the analyst the sausages should have contained at least 65 per cent. of total meat. The butcher aimed at 56 per cent. for sausages selling at 2s. 6d., and claimed that they met a considerable demand at that standard in the locality. On a charge under section 3 of the Food and Drugs Act, 1938, of selling sausages not of the substance demanded, the justices, bearing in mind that the Order compelling a meat content of 65 per cent. was revoked in 1953, and that there was a considerable difference of opinion as to the amount of meat that should be contained in best sausages some of which were selling in the locality at more than 2s. 6d. a pound, dismissed the informations. The prosecutor appealed:—

Held, that, on charges under section 3, if no standard had been fixed, the justices had to fix a standard and, since they did not accept the analyst's report, they were entitled to dismiss the informations.

Per Lord Goddard C.J. As a matter of practice, analysts' reports should always be attached to the case. [J. D. P.]

COMMENTARY. Hallett J. in *Collins Arden Products, Ltd.* v. *Barking Corporation* [1943] K.B. 419 at 424, considering section 3 said: "It is the demand by the purchaser which, to my mind, is the determining factor in deciding what ought to have been supplied." This excludes, as being the test, the opinion of an official which might well be considered "a rather obtrusive interference" (see *Morton* v. *Green* (1881) 8 Rettie (J.) 36, *per* the Lord Justice-Clerk).

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[8] For the prosecutor: *Paul Wrightson* (instructed by Boxall & Boxall for Dixon & Hindle, Wells, Somerset). For the defendant: *A. E. Holdsworth* (instructed by John F. Chadwick for Boxall, Porter & Mangnall, Yeovil).

Food and Drugs—*Unfit for human consumption—bun with piece of metal in it*

J. MILLER *v.* BATTERSEA BOROUGH COUNCIL [9] (Q.B., Divisional Court: Lord Goddard C.J., Ormerod and Glyn-Jones JJ.: October 14, 1955) ([1955] 3 W.L.R. 559; [1955] 3 All E.R. 279).

A customer bought at the defendants' shop four chocolate cream buns in one of which was a piece of metal, which the customer got into his mouth. On a charge under section 9 of the Food and Drugs Act, 1938, the magistrate was of the opinion that the bun as a whole was unfit for human consumption and convicted the defendants, fining them £10. On appeal:—

Held, allowing the appeal, that although the presence of the metal might justify a charge under section 3 of the Act, its presence could not be said to make the bun unfit for human consumption within section 9, and, therefore the defendants had been wrongly convicted. [J. D. P.]

COMMENTARY. A person is guilty of an offence under section 3 (1) if he sells any "food or drug which is not of the nature, or not of the substance, or not of the quality, of the food or drug demanded by the purchaser." An offence against this section was held to have been committed in *Lindley* v. *George W. Horner & Co.* [1950] 1 All E.R. 234, where some sweets contained a nail.

Section 9 deals with unsound food, *i.e.*, putrid or dangerous to health and it could not be said in this case that the bun was unwholesome or unsound.

Food and Drugs—*Unfit for human consumption—loaf of bread with piece of string in it*

TURNER & SON *v.* OWEN [10] (Q.B., Divisional Court: Lord Goddard C.J., Ormerod and Barry JJ.: October 24, 1955) ([1955] 3 W.L.R. 700).

The plaintiffs were convicted by justices on a charge under section 9 of the Food and Drugs Act, 1938, for selling a loaf of bread alleged to be unfit for human consumption. The loaf had a piece of string in it. At the hearing of the defendants' appeal, it was conceded by the prosecutor that in view of the court's decision in *Miller* v. *Battersea Borough Council* (see above) there was no answer to the appeal. Counsel for the defendants asked for the costs incurred by them in the court below on the ground that an adjournment had been asked for because it was known that there would be an appeal in *Miller's* case and had been refused:—

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[9] For the defendants: *James Burge* (instructed by Claude Barker & Partners). For the prosecutor: *Paul Wrightson* (instructed by Sharpe, Pritchard & Co.).

[10] For the appellants: *Mervyn Griffith-Jones* (instructed by Sidney C. Elphick for Clayton, Massey & Mason, Nottingham). For the prosecutor: *Elson Rees* (instructed by Sharpe, Pritchard & Co. for Town Clerk, Nottingham).

Held, allowing the appeal, that although it did not follow that in any case in which a conviction was set aside a successful appellant should be given costs, in the present case the justices should have granted an adjournment to await the result of *Miller's* case, and the prosecution must pay seven guineas costs in respect of the proceedings before the justices. [J. D. P.]

Indictment—*Conspiracy to steal—conspiracy and larceny in substance same offence.* See R. *v*. WEYMOUTH, p. 775, above.

Intoxicating Liquor—*Supplying drinks after hours—licensee giving drinks to his staff*

SCHOFIELD *v*. JONES [11] (Q.B. Divisional Court: Lord Goddard C.J., Ormerod and Barry JJ.: October 20, 1955) ([1955] 1 W.L.R. 1133; [1955] 3 All E.R. 337).

The licensee of an inn owned by a brewery company was accustomed to giving his staff a drink after closing hours when they had tidied the place up. Apart from Saturdays, when he stood them a second drink himself, all the drinks were debited to the company. Each member of the staff was given a drink irrespective of the capacity in which he or she was employed. The only qualification to receive the drink was to have been a member of the staff on the particular night. The licensee was charged under section 100 (1) (*a*) of the Licensing Act, 1953, of supplying intoxicating liquor outside permitted hours and was convicted. On appeal:—

Held, dismissing the appeal, that the licensee was not entertaining his private friends within the meaning of section 100 (2) (*c*), nor, except on Saturdays, were they entertained by him at his own expense and, therefore, he was rightly convicted.

Dictum of Humphreys J. in *Jones* v. *Cockcroft* [1945] 2 All E.R. 333, 335, criticised. [J. D. P.]

COMMENTARY. Neither the Act nor the cases define "private friends," it is a question of fact in each case. In *Jones* v. *Cockroft*, above, Humphreys J. said: "I do not think the fact that the landlord said here: 'As a matter of fact, I shall put down those drinks to the owners of the house afterwards,' means that it was not at his own expense. The words in the section 'at his own expense' are probably merely to emphasise that he must be the person who pays, not the people who get the drink." It was with this dictum that the court disagreed.

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[11] For the appellant: *Percy Lamb Q.C.*, *R. H. Mais* (instructed by Meredith, Hardy & Hutchison for Bullock, Worthington & Jackson, Manchester). For the respondent: *W. G. Morris* (instructed by Sharpe, Pritchard & Co. for Town Clerk, Manchester).

Jury—*Jurors in waiting—exclusion from court.* See R. *v.* COOK, p. 792, below.

Larceny—*Intent—direction to jury.* See R. *v.* O'CONNOR; R. *v.* YOUNG, pp. 794, 795, below.

Larceny—*Taking money from electricity meter—property in the money*

MARTIN *v.* MARSH[12] (Q.B., Divisional Court: Lord Goddard C.J., Ormerod and Glyn-Jones JJ.: October 19, 1955) (*The Times*, October 20, 1955).

M., who had a shilling-in-the-slot electricity meter at his home, forced the padlock on the meter and extracted coins from it. He continued to insert coins when he required electricity, but when the meter came to be emptied it was found that there was only 8s. in it, whereas £20 16s. 9d. worth of electricity had been consumed since the meter was last emptied. On a charge against M. for larceny, M. contended that the property in the money which he placed in the meter did not pass to the Electricity Board and his only obligation was to pay eventually for the electricity consumed. The justices held that M. was not guilty of larceny but was using the meter as a private money-box. On appeal by the prosecution:—

Held, allowing the appeal, that when the money was put into the meter it became the property of the Electricity Authority, and accordingly, larceny had been committed. [J. D. P.]

Lottery—*Lottery promoted or proposed to be promoted—printing tickets for—use of premises for*

R. *v.* HIBBERD[13] (Salford Hundred Quarter Sessions: A. E. Jalland, Esq., Q.C., J.P., Chairman: October 27, 1955).

The accused, a printer, was charged on twelve counts concerning four lotteries, with printing tickets for use in a lottery promoted or proposed to be promoted in Great Britain, and with using premises for purposes connected with the promotion or conduct of a lottery promoted or proposed to be promoted contrary to section 22 (1) (*a*), (*f*) of the Betting and Lotteries Act, 1934. Police officers had interviewed the accused and inspected his printing premises where they found a large number of tickets relating to four lotteries and letters, a telegram and ticket worknotes showing a regular supply of tickets ; on the face of the tickets appeared details of the lotteries and various tickets bore different dates showing a continuous supply. After the police officers had given their evidence, counsel for the defence submitted that the prosecution had failed to prove the existence of a lottery promoted or proposed to be promoted in Great Britain ; the production of a lottery ticket was no evidence that a lottery had taken place or was proposed. Counsel for the prosecution contended that the very act of printing tickets was part of the promotion of the lottery ; the sale of tickets and distribution of prizes was part of the conduct of a lottery which is distinguished from promotion by section 24 (2). The Chairman ruled that there was evidence of a lottery promoted or proposed to be promoted to go to the jury. Evidence was given concerning one of the lotteries which was run by a Scottish football club. It was contended that this was a private lottery as the club was not run for profit and the sale of tickets for the lottery was confined strictly to members ; the lottery had been started in 1948 to raise funds for a club building fund, and had been operated weekly ever since. Counsel for the prosecution argued that the question of whether a lottery was private was one for the jury ; as the lotteries had been held regularly every week the jury might consider that the club had gone into the business of lotteries and had lost the protection of the Act.

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[12] For the prosecutor: *J. H. Mendl* (instructed by Le Brasseur & Oakley for Graham & Graham, St. Austell). For the defendant: *J. P. Widgery* (instructed by Jaques & Co. for Stephens & Scown, St. Austell).

[13] For the prosecution: *T. A. Cunliffe* (instructed by Lees & Riches, Oldham). For the defence: *J. di. V. Nahum Q.C., J. W. Stansfield* (instructed by Taylor & Hindle, Manchester).

The Chairman left to the jury the question of whether there was proof of the existence of a lottery promoted or proposed to be promoted. He directed them that if they returned an acquittal on the issue of printing they must also acquit on the charge of using premises for the purposes of a lottery since the only evidence of such use was the actual printing ; if they convicted the accused of printing tickets for a lottery they should not convict him of using the premises for the purposes of a lottery as such a conviction would merely duplicate the offence.

The accused was found guilty on six counts of printing tickets for use in the three English lotteries, not guilty on three counts for similar offences in respect of the Scottish lottery, and not guilty on three counts of using premises for purposes connected with the English lotteries. He was fined £120.

[G. Vaughan Davies, *Barrister-at-Law.*]

COMMENTARY. The decision of the jury in this case should be compared with those of the Divisional Court in *Maynard* v. *Williams* [1955] Crim.L.R. 113; *Pearse* v. *Hart* [1955] Crim.L.R. 113. There were certainly restrictions on the Scottish lottery in this case which were not present in the Divisional Court cases.

Magistrates' Courts—*Appeal from—driving without due care and attention.* See GIBBONS *v.* KAHL, p. 788, below.

Murder—*Provocation—attack on member of rival political party*

AFONJA *v.* THE QUEEN [14] (Judicial Committee of the Privy Council: Viscount Simonds, Lords Keith of Avonholm and Somervell of Harrow: October 24, 1955) (*The Times*, October 25, 1955).

On a charge of murder, the case for the prosecution was that A. and five others, who were members of a political party, together with a mob of about 200 persons attacked the house of the deceased, a member of a rival party, and set fire to it. The deceased and his family rushed out of the house, he was seized and beaten by the accused and died from his injuries. The accused were convicted of murder. On a petition for special leave to appeal, it was argued for the petitioners that at the time they were acting in the heat of passion caused by an earlier attack on a meeting of their party, that it should have been held that that earlier attack constituted a sudden provocation, and that the question whether the offence was manslaughter and not murder should have been considered.

Held, that leave to appeal should be refused. [J. D. P.]

COMMENTARY. Provocation can be successfully pleaded to reduce murder to manslaughter only if the act done follows immediately upon the provocation: it must be considered whether a sufficient interval has elapsed since the provocation to allow a reasonable man time to cool: see *Mancini* v. *D. P. P.* [1942] A.C. 1, and Archbold, 33rd ed., 940. Unfortunately as no reasons were given in this case it is not known whether it was necessary for their Lordships to consider the position of a "reasonable man" in a crowd. It might well be relevant for the jury to consider whether the "reasonable man" would take longer to cool when subjected to mob hysteria than when he is not: there is no authority on the point.

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[14] For the petitioners: *Christopher Shawcross Q.C., D. A. Grant* (instructed by Rexworthy, Bonser and Wadkin). For the Crown: *J. G. Le Quesne* (instructed by Charles Russell & Co.).

Quarter Sessions—*Appeal against conviction—documents to be given to court.* See R. *v.* GRIMSBY BOROUGH QUARTER SESSIONS, *ex p.* FULLER, p. 774, above.

Road Traffic—*Defective brakes—vicarious liability*

HUTCHINGS *v.* GILES [15] (Q.B. Divisional Court: Lord Goddard C.J., Ormerod and Glyn-Jones JJ.: October 17, 1955).

H. was charged with unlawfully permitting the use of a motor-vehicle, namely, a goods van, on a road in Andover contrary to regulation 75 of the Motor Vehicles (Construction and Use) Regulations, 1951. H. was the owner of the motor-van which, while being driven by an employee, ran down a hill and collided with a stationary lorry because the foot and hand brakes were in a defective condition. The van had previously been found to be defective in its brakes and had been taken off the road by a Ministry of Transport examiner, but the necessary repairs had been done and a week before the accident took place a certificate of roadworthiness in respect of the van had been issued to H. It was contended on behalf of H. that he could not be guilty of the offence of "permitting the use" as the brakes had not failed until after the vehicle had left his premises. The justices were of the opinion that H. should have known of the condition of the brakes before the van left his premises and that by his failure to prevent it being used in that condition he was guilty of permitting its use. He was convicted and fined £10. On H.'s appeal against conviction:—

Held, that although, if H. had been charged with "using" the vehicle in its defective condition he would have been properly convicted, the charge of "permitting" its use had not been made out as, since the decision in *James & Son* v. *Smee* [1955] Crim.L.R. 42 by which the court considered itself bound, it was necessary, in order to substantiate the charge of "permitting the use" for the prosecution to prove knowledge of the defects and in the present case the justices had found only that he should have had knowledge of the defects.

Per Lord Goddard C.J.: In view of the decision in *James & Son* v. *Smee* the police would be well advised in circumstances of this sort to avoid, wherever possible, the use of this much-canvassed word "permit" and, where a vehicle is being driven by a servant on the master's business to charge the master with the substantive offence of using the vehicle.

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[15] For the appellant: *M. G. Polson* (instructed by Church, Adams, Tatham & Co. for Bradly, Trimmer & Son, Alton). For the prosecutor: *Raymond Stock* (instructed by Barker, Son and Isherwood, Andover).

[Mrs. E. M. Wellwood, *Barrister-at-Law*.]

Road Traffic—*Driving licence—disease rendering person unfit to drive—" sudden attack "*

SWIFT *v.* NORFOLK COUNTY COUNCIL [16] (Q.B. Divisional Court: Lord Goddard C.J. and Ormerod J.: October 28, 1955).

S., a school-teacher, aged 52, who had held a driving licence for many years, had for some time been subject to periodic attacks of unconsciousness. One morning she left her home at Horton, Norfolk, to drive a distance of fifteen miles. She had a headache when she started out and after driving a short distance, feeling unwell and thinking that an attack of unconsciousness was coming on, she parked her car, put on the hand brake and turned off the ignition. She was later found unconscious in her car. The county council revoked her driving licence and S.'s appeal to justices against that decision was dismissed on the ground that she was suffering from a disease (other than a disease specified in regulation 5 of the Motor Vehicles (Driving Licences) Regulations, 1950) likely to cause the driving by her of a motor-vehicle to be a source of danger to the public. S. exercised her right under section 5 (4) of the Road Traffic Act, 1930 and applied to be subject to a driving test and for the restoration of her driving licence to enable her to take the test, but the county council refused to restore the licence. S. again appealed to the justices under section 5 (5) of the Road Traffic Act, 1930 and asked for an order directing the Norfolk County Council to restore her driving licence and allow her to take the driving test. Although the justices found that the attacks to which S. was subject were always preceded by a period of warning of ample duration to allow her to stop and park her car, they dismissed the appeal on the ground that S. was suffering from " sudden attacks of disabling giddiness or fainting " within the meaning of regulation 5 of the Regulations of 1950. S. appealed to the Divisional Court:—

Held, dismissing the appeal, that a " sudden attack " for the purposes of regulation 5 of the Motor Vehicles (Driving Licences) Regulations, 1950, was an attack which came on unexpectedly or for no particular reason, and the justices were justified on the evidence before them in coming to the decision they did.

[Mrs. E. M. Wellwood, *Barrister-at-Law*.]

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[16] For the appellant: *Leslie Boreham* (instructed by Butt and Bowyer for Daynes, Keefe & Co., Norwich). For the respondent county council: *Michael Havers* (instructed by Sharpe, Pritchard & Co.).

Road Traffic—*Driving without due care and attention—appeal from justices*

CHAPMAN *v.* HOBROUGH[17] (Q.B., Divisional Court: Lord Goddard C.J., Ormerod and Barry JJ.: October 25, 1955).

H. was charged with driving his car without due care and attention contrary to section 12 of the Road Traffic Act, 1930. The justices found the following facts. A collision occurred at a cross-roads between H.'s car and a car driven by A. H.'s car had turned over and the rear nearside was extensively damaged. The front bumper of A.'s car was bent and the bonnet buckled. A constable who attended at the scene of the accident gave evidence which the justices accepted, and produced and read H.'s statement taken after caution. H. contended that the facts did not establish a prima facie case to answer. The justices accepted H.'s contention and dismissed the charge without calling on H. to answer it. The prosecutor appealed.

Held, dismissing the appeal, that the justices, having heard the prosecution evidence, which included H.'s own statement explaining the accident, were entitled to come to the decision which they did. The court only had power to interfere in a case of this nature if the justices had come to a perverse decision. If there was a cross-road collision it looked as if one or both drivers were to blame, but occasionally no one was to blame. At any rate it was not for this court to sit as an appellate tribunal of fact, but only to see whether there was evidence to support the justices' decision. *Bracegirdle* v. *Oxley* [1947] K.B. 349, was a case of a very special character in which the court had interfered because the justices in dismissing the information had not acted judicially.

[Miss C. J. Ellis, *Barrister-at-Law.*]

COMMENTARY. *Bracegirdle* v. *Oxley*, above, was a clear case of dangerous driving which the magistrates dismissed and the Divisional Court held that no reasonably minded bench of magistrates could have decided as the magistrates had done in that case. The court took the opportunity of reminding the justices that they were subject to the decisions of the Divisional Court.

Attention is drawn to *Gibbons* v. *Kahl,* p. 788, below, where Lord Goddard C.J. referred to the bringing of appeals by the police after unsuccessful charges of driving without due care and attention.

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[17] For the appellant: *T. Springer* (instructed by Sharpe, Pritchard & Co. for D. Emrys Morgan, Chelmsford). For the respondent: *J. S. R. Abdela* (instructed by Gerald Howard & Co.).

Road Traffic—*Drunk in charge of a vehicle—direction to jury.* See R. *v.* HARNETT, p. 793, below.

Road Traffic—*Failing to observe policeman's signal—signal contradicting traffic light*

R. *v.* WATTS [18] (Mansion House Justice Room: Alderman G. H. Hope-Morley, Esq., Magistrate: September 12, 1955).

At a crossing controlled by lights, traffic was at times so congested that a constable was posted to hold up traffic when necessary even though the light was green. At this crossing the constable signalled to the defendant to stop his motor-vehicle and at that moment the light was green. The defendant drove on past the constable and the light, and when he passed the light it was amber. The offence alleged, however, was not that of passing the amber light, but that of failing to stop when so required by a police constable in uniform, under section 20 (3) of the Road Traffic Act, 1930. The defendant, who was not represented, raised the defence that the light being green when the signal was made, he thought the signal did not apply to him, and that he was entitled so to think:—

Held, that even though the light was green the defendant should have stopped at the constable's signal. A conviction was registered but the defendant was discharged absolutely.

[C. G. Peyton, *Clerk to the Lord Mayor.*]

COMMENTARY. Regulation 23 of the Traffic Signs (Size, Colour and Type) Regulations, 1950 (S.I. No. 953), states: "The significance of the light signals . . . shall be as follows: . . . (c) the green signal shall be taken to indicate that vehicular traffic may pass the signal . . . subject to the directions of any police constable . . . who may be engaged in the regulation of traffic."

The Minister of Transport and Civil Aviation was asked recently in the House of Commons whether he would arrange for traffic signals to be disconnected when traffic at road junctions is being controlled by the police. He replied that in case of need the police can turn out the traffic signals, but in some circumstances it is helpful both to motorists and pedestrians for the police to supplement or even override the lights by hand signals (H.C. Debates, Vol. 545, col. *113*; November 2, 1955).

Road Traffic—*Pedestrian crossing—failing to accord precedence to pedestrian—evidence*

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[18] The defendant did not appear and was not represented.

GIBBONS *v.* KAHL [19] (Q.B. Divisional Court: Lord Goddard C.J., Ormerod and Barry JJ.: October 20, 1955) ([1955] 3 W.L.R. 596; [1955] 3 All E.R. 345).

A trolley-bus driver was approaching a pedestrian crossing when three children stepped on to the crossing. The driver gave a slow-down hand signal, came to a stop on the near side of the road and waved the children to cross the road. The children started to cross, but when they had passed the front of the bus the defendant drove his car on to the crossing and knocked down one of the children. The defendant knew that he was approaching a crossing, but did not see the children until they had passed in front of the bus. He was charged with driving without due care and attention contrary to section 12 (1) of the Road Traffic Act, 1930, and with failing to accord precedence to a pedestrian contrary to regulation 4 of the Pedestrian Crossings Regulations, 1954. The justices being of the opinion that the facts raised some doubt whether the defendant had taken all due care in his driving or had negligently failed to accord precedence to pedestrians contrary to the regulation, dismissed both summonses. The prosecutor appealed:—

Held (1) whether or not a person has driven without due care and attention was a question of fact for the justices and, there being no evidence that their findings were perverse, their decision on the first charge ought not be disturbed. (2) It was the duty of motorists to be able to stop before they arrived at a crossing unless they could see that there was nobody on the crossing; if, therefore, there was a stationary vehicle which obscured the view of a motorist approaching a crossing he should assume that there was a pedestrian on the crossing and be in a position to stop. Accordingly, on the facts, an offence against the regulation had been proved.

Per Lord Goddard C.J.: This court never views with particular favour the police bringing an appeal on a question whether a person drove with due care and attention, because it is so essentially, as a general rule, a question for the justices. [J. D. P.]

COMMENTARY. This case defines the duty of a driver approaching a pedestrian crossing when his view is obscured by a stationary vehicle and supplements the decision in *Leicester* v. *Pearson* [1952] 2 Q.B. 668. In that case it was decided that the duty imposed on a motorist to accord precedence to a pedestrian on a crossing is not absolute and that a finding that the driver has not been negligent will afford him a complete defence.

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[19] For the prosecutor: *Paul Wrightson* (instructed by Solicitor for Metropolitan Police). For the defendant: *D. Fairbairn* (instructed by Avery, Son & Fairbairn).

Sentence—*Borstal training—offence committed while on licence*

R. *v*. GAUCI [20] (Court of Criminal Appeal: Lord Goddard C.J., Ormerod and Barry JJ.: October 24, 1955).

G. had been sentenced to a term of Borstal training in 1953 for an offence of wounding with intent to do grievous bodily harm. He was released on licence in December, 1954. Whilst still on licence he was convicted at Glamorgan Assizes of obstructing two police officers in the execution of their duty. The facts of the last offence were that a party of youths, of which G. was one, were making a nuisance of themselves outside a dance hall. Two police officers were arresting one of them, and G. was attempting to prevent the officers from effecting the arrest. As G. was still under twenty-one years of age, the learned judge sentenced him to a new term of Borstal training. On appeal against sentence to the Court of Criminal Appeal:—

Held, that a sentence of Borstal training was not, in the circumstances, an appropriate way of dealing with the case, particularly as the Prison Commissioners had recommended that G. would probably not derive any benefit from further Borstal training. Accordingly, the appeal would be allowed and a sentence of twelve months' imprisonment would be substituted for the sentence of Borstal training. [H. P.]

COMMENTARY. The court stated that the practice in cases of this kind where a man is released under supervision is that on committing another offence he would be recalled to a training centre unless he has been sentenced to imprisonment for a longer period than six months, and will serve a minimum of six months at a Borstal recall training centre. If, however, he is sentenced to a fresh term of Borstal training, he will not go to the training centre, but go to a Borstal institution in the ordinary way and will commence his training there from the beginning.

Shops—*Jewish shop—weekly half-holiday*

MILLER'S CASH STORES *v*. WEST HAM BOROUGH COUNCIL [21] (Q.B. Divisional Court: Lord Goddard C.J., Ormerod and Glyn-Jones JJ.: October 13, 1955) ([1955] 1 W.L.R. 1121 ; [1955] 3 All E.R. 282).

A local authority made an order under the Shops Act, 1912, providing that all grocers' shops in the borough should be closed for the weekly half-holiday at 1 p.m. on Thursday, provided that any shopkeeper might substitute Saturdays for Thursdays on affixing a notice to that effect in his shop. The appellants, a firm of Jewish grocers, registered under section 7 of the Shops (Sunday Trading Restriction) Act, 1936, closed their shop on Wednesdays at 1 p.m. affixing a notice to that effect in their shop. On being charged with a breach of the order, the appellants contended that since the order contained no proviso that any registered shopkeeper might substitute Fridays for Thursdays, the order was a nullity as regards, and did not apply in respect of, their shop. The firm was convicted and fined 5s. On appeal:—

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[20] The appellant appeared in person. The Crown was not represented.

[21] For the firm: *Ronald Bernstein* (instructed by Breeze, Benton & Co.). For the borough council: *A. G. F. Rippon* (instructed by the Town Clerk, West Ham).

Held, dismissing the appeal, that since section 53 (13) of the Shops Act, 1950 (which superseded the Act of 1936) provided for the substitution of Friday for Saturday, the order, which depended on the Act for its validity, must be deemed to include that proviso; accordingly, the order applied to the shop, and the firm were rightly convicted. [J. D. P.]

Solicitors—*Striking off the roll—criminal conviction—indirect appeal against conviction*

Re A SOLICITOR [22] (Q.B., Divisional Court: Pearce, Barry and Glyn-Jones JJ.: October 21, 1955) (*The Times*, October 22, 1955); (Court of Appeal: Singleton, Jenkins and Parker L.JJ.: October 26, 1955) (*The Times*, October 27, 1955).

A solicitor, who had been convicted of two offences under the Prevention of Fraud (Investments) Act, 1939, and whose appeal from that conviction was dismissed by the Court of Criminal Appeal ([1955] Crim.L.R. 323), was struck off the roll of solicitors for conduct unbecoming to a solicitor. He appealed to the Divisional Court against the decision of the Law Society on the grounds that his conviction had been obtained by wrongful means and was contrary to justice, and that the dismissal of his appeal against that conviction was contrary to law.

Held, dismissing the appeal, that the court could not go behind the convictions which were valid convictions made by a jury and upheld by the Court of Criminal Appeal.

The solicitor in applying to the Court of Appeal for leave to appeal from the Divisional Court's decision, indicated that, if leave were granted, he would argue that as the Court of Criminal Appeal had decided, in two cases subsequent to the dismissal of his own appeal (*R.* v. *Hepworth and Fearnley* [1955] Crim.L.R. 576; and

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[22] The appellant appeared in person. For the Law Society: *J. R. Cumming-Bruce* (instructed by Hempsons).

R. v. *Murtagh and Kennedy* [1955] Crim.L.R. 506) that his conviction ([1955] Crim.L.R. 323), was wrong, it was open to the Court of Appeal to decide whether his case had been correctly decided or not; that it was open to him to challenge his striking off by the Law Society both in the Divisional Court and in the Court of Appeal and thus challenge indirectly the decision of the Court of Criminal Appeal.

Held, that the court in the exercise of its discretion would refuse leave. [J. D. P.]

COMMENTARY. Section 1 (6) of the Criminal Appeal Act, 1907, provides that, subject to the right to appeal to the House of Lords, the determination of the Court of Criminal Appeal shall be final and therefore in so far as the application in this case was an attempt to bring the decision of the Court of Criminal Appeal up for review by a civil court it was bound to fail. As regards the right of appeal to the House of Lords section 16 of the Criminal Justice Act, 1925, requires that an application for the certificate of the Attorney-General shall be made within seven days from the date of the decision of the Court of Criminal Appeal. No duty is imposed by either of the Acts of 1907 and 1925 upon the Attorney-General as regards the grant or refusal of his certificate. There appears to have been no case in which the Attorney-General has granted a certificate after at first refusing it but there seems to be nothing in the Acts to prevent his doing so.

Town and Country Planning—*Advertisements—unlawful posting—advertisement outside roadside café*

DOMINANT SITES AND OTHERS *v.* BERKSHIRE COUNTY COUNCIL [23] (Berkshire Quarter Sessions, Appeal Committee: Sir Hildreth Glyn-Jones, Deputy-chairman: July 4, 1955) ([1955] J.P.L. 823).

Appeals to quarter sessions against convictions by the Reading County justices, and penalties imposed in respect of the erection of a large hoarding and display of a poster thereon outside a roadside café at Twyford, near Reading. The owner of the café business, the second appellant, had authorised the first appellants to erect the hoarding and display the advertisement, the subject-matter of which was the product of Bovril, Ltd., the third appellants. The justices had convicted all three appellants for offences under section 32 of the Town and Country Planning Act, 1947, in that planning permission had not been obtained for either the erection of the hoarding or display of the poster.

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[23] For the appellants: *A. M. Lyons Q.C., S. W. Magnus,* and *P. B. Calwell* (instructed by Gouldens). For the respondents: *H. Marnham* (instructed by E. R. Davies, Reading).

Held, dismissing the appeals of the first and second appellants that the hoarding was not part of the café building and therefore not part of business premises, and permission for the display of the advertisement was accordingly not afforded by class IV in regulation 12 of the Control of Advertisements Regulations, 1948, which allows the display on business premises of advertisements relating wholly to the business carried on or goods sold on those premises. The further question whether the advertisement in this case related wholly to the business carried on and goods sold on the premises therefore did not arise. Further, that an advertisement displayed on the forecourt of a building was not an advertisement " displayed within a building " within the meaning of regulation 3. The appeal of Bovril, Ltd., was allowed and the penalty remitted, on the grounds that it had not been proved that they had authorised the erection or display of the advertisement at the particular place.

[In a further case of a similar nature, which was heard together with this case, the appeals of Dominant Sites, Ltd. and of the owners of the premises were also dismissed, but the penalty in the case of Dominant Sites, Ltd. was reduced from £25 to £5.

COMMENTARY. This matter is dealt with very fully in an article by Mr. J. K. Boynton at [1955] J.P.L. 792.

Trial—*Joint indictments, separate trials—exclusion of jurors in waiting—evidence*

R. *v*. COOK [24] (Court of Criminal Appeal: Lord Goddard C.J., Ormerod and Barry JJ.: October 24, 1955).

C. was convicted at Bath Quarter Sessions of stealing lead. He had been jointly indicted with two others, H. and O., who had pleaded guilty to the offence. The learned Recorder began to deal with H. and O. before the trial of C., whereupon application was made by C.'s counsel that the jurors in waiting should leave the court while the police were giving evidence about H. and O. The learned Recorder took the view that he had no power to close a public court, and the police officer then gave evidence which included a statement that C. was the ringleader. During the course of the trial of C., H. gave evidence for the defence and was cross-examined upon a statement made by him to the police. O. was not called as a witness, but he had also made a statement to the police. Upon their retirement, the statements of H. and O. were given to the jury. C. appealed to the Court of Criminal Appeal against his conviction on the grounds (1) that the jurors in waiting ought to have left the court while the evidence of the police officer as to the characters of H. and O. was being heard, and (2) that the statements of H. and O., which were inadmissible evidence as against C., were wrongly given to the jury.

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[24] For the appellant: *N. R. Blaker* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *W. M. Huntley* (instructed by the Town Clerk, Bath).

Held, (1) that the learned recorder was wrong in thinking that he had no power to exclude jurors in waiting from the court. The court has always power to exclude certain members of the public for good reasons and in the interests of justice from the court. But this ground of appeal was not by itself sufficient to justify the conviction being quashed and the proviso to section 4 (1) of the Criminal Appeal Act, 1907, would, therefore, be applied. (2) The fact that H. had been cross-examined upon his statement did not make it evidence against C., and it was quite irregular for the statements of H. and O. to be handed to the jury. Since C. had made a complete confession to the police, it would, however, be a mockery to say that there had been any miscarriage of justice, and the Court would again apply the proviso. The appeal would, therefore, be dismissed. [H. P.]

COMMENTARY. The general rule is that a trial on indictment or criminal information should be held in open court but this general rule must yield to the paramount duty of the court to secure that justice is done: *Scott* v. *Scott* [1913] A.C. 417. The judge in deciding whether to exclude persons from the court must treat the matter as one of principle, and as turning, not on convenience but on necessity: see *per* Viscount Haldane L.C. at p. 438.

The statements of H. and O. were inadmissible against C. since a prisoner can only be affected by confessions made by himself and not by those of his accomplices (Phipson on *Evidence*, 9th ed., 272).

Trial—*Onus of proof—direction to jury*

R. *v.* HARNETT [25] (Court of Criminal Appeal: Lord Goddard C.J., Ormerod and Glyn-Jones JJ.: October 17, 1955) (*The Times*, October 18, 1955).

H. was convicted at Middlesex Sessions of being drunk in charge of a motor-vehicle. It was not contested at the trial that H. was under the influence of drink; the question was whether he was in charge of the vehicle. The facts were that, immediately before the alleged offence, H., together with another man J., had been driven in the vehicle by a man called Hill. Hill having apparently had enough of driving two drunken men, stopped the car, threw the ignition key on the pavement and walked away. H. then picked up the key and, according to the police evidence, after making several attempts to get into the car, did get into the car and started the engine. According to the defence, H. had never entered the car, but had walked to a nearby telephone kiosk and had telephoned to his employer for another driver to be sent. He said he had no intention of taking charge of the car or of driving it. On appeal against conviction to the Court of Criminal Appeal, H. contended that the summing-up was defective in that the learned Chairman had told the jury, in effect, that if they were satisfied that H. had the key of the car in his pocket, then he was in charge of the car.

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[25] For the appellant: *W. M. F. Hudson* (instructed by Samuel Coleman). For the Crown: *H. J. Leonard* (instructed by the Solicitor, Metropolitan Police).

Held, allowing the appeal, that whether H. was in charge of the car was a question of fact for the jury to try. The fact that he had the ignition key in his pocket was not the only factor to be considered; the jury had to take into account the whole of the circumstances. The learned Chairman failed to direct the jury on the matters which they had to consider in order to decide whether H. was in charge of the car. In addition, no reference was made in the summing-up to the evidence for the defence. The summing-up was so defective that the conviction could not stand. [H. P.]

COMMENTARY. The common feature of this and the two following cases was the defectiveness of the summing-up. The most recent case on this topic is *R.* v. *Hepworth and Fearnley* [1955] Crim.L.R. 576, the result of which is that in a summing-up it is always desirable that a jury should be told that the burden of proof is on the prosecution, and the jury must be directed that before they convict, they must feel sure of the prisoner's guilt. In the latter respect they may be told "You must be satisfied beyond reasonable doubt" or "You must be completely satisfied" or "You must feel sure of the prisoner's guilt." But it is not the particular formula of words that matters.

See further [1955] Crim.L.R. 464–74.

Trial—*Onus of proof—direction to jury*

R. *v.* O'CONNOR [26] (Court of Criminal Appeal: Lord Goddard C.J., Ormerod and Glyn-Jones JJ.: October 17, 1955) (*The Times,* October 18, 1955).

O. was convicted at Bradford City Sessions of the theft of a bicycle. The bicycle had disappeared from a close or garden and had been found in O's possession. O.'s explanation was that he had found it "lying in a snicket" (*i.e.*, a close or garden) and had taken it home intending to take it to the police the following day. O. appealed to the Court of Criminal Appeal against his conviction, contending that the summing-up was defective in that the jury were not directed as to the onus of proof.

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[26] For the appellant: *K. D. E. Harington* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *Stanley E. Brodie* (instructed by the Town Clerk, Bradford).

Held, allowing the appeal, that it was not sufficient for the learned Recorder to have directed the jury that if they thought O. had taken the bicycle home intending to steal it they should convict, whereas if they thought his story was true they should acquit. The jury ought to have been told that if they were in any doubt whether O.'s story was true or not they should acquit him, and that the onus was on the prosecution to prove his guilt. The summing-up was quite defective and the conviction could not stand. [H. P.]

COMMENTARY. See commentary to R. *v.* HARNETT, p. 793, above.

Trial—*Onus of proof—direction to jury*

R. *v.* YOUNG [27] (Court of Criminal Appeal: Lord Goddard C.J., Ormerod and Glyn-Jones JJ.: October 17, 1955) (*The Times*, October 18, 1955).

Y. was convicted at West Kent Quarter Sessions of stealing a sum of £3 10s. in money. The facts were that Y.'s daughter, who was aged fourteen, had found the money in a car park and had brought it home and handed it over to her mother, Y., who had said at the time that she would take charge of the money until she could find the true owner. Two days later a police officer came to see Y., who told him that she had spent the money and promised to pay it back in three days time. Y. said in evidence at the trial that her statement to the police officer was not true and that that had been an excuse to avoid giving the officer the money which she wished to hand over to the true owner herself. Shortly afterwards she did, in fact, ascertain who was the true owner and handed over to him £3 10s. in notes. Y. said that these were the same notes that had been handed to her by her daughter. The jury found Y. guilty but added that they thought that what she did was more foolish than criminal. Y. appealed to the Court of Criminal Appeal against her conviction on the ground that the summing-up did not adequately put the issue to the jury.

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[27] For the appellant: *K. D. E. Harington* (instructed by Gulland & Co., Maidstone). For the Crown: *Peter Boydell* (instructed by R. P. Tunstall, Maidstone).

Held, allowing the appeal, that the learned Deputy Chairman may have conveyed to the jury in one passage of the summing-up the impression that the mere fact that the notes Y. handed over to the true owner were not the same notes which had been handed to her by her daughter would alone justify them in convicting her of stealing. The issue for the jury was quite clear and was whether or not when she received this money she knew that by taking proper steps she could find the true owner and, if so, whether or not she was dishonest in keeping or spending the money without taking the proper steps to find the true owner. The fact that the jury had said that what Y. did was more foolish than criminal supported the contention that the jury had been misled by the summing-up. In the circumstances the conviction could not safely be allowed to stand. [H. P.]

COMMENTARY. See commentary to R. *v.* HARNETT, p. 793, above.

Trial—*Summing-up—failure to put defence to jury*

R. *v.* STEPTO [28] (Court of Criminal Appeal: Lord Goddard C.J., Ormerod and Barry JJ.: October 24, 1955).

S. was convicted at West Sussex Quarter Sessions of receiving stolen property. At the trial, S. contended that he could not have received the property because he was elsewhere at the time it was alleged to have been received, and he called four witnesses to support his case. S. appealed to the Court of Criminal Appeal against his conviction on the ground of misdirection of the jury in that the defence was not put to the jury.

Held, allowing the appeal, that the learned Chairman did not refer at all to the evidence given by the witnesses for the defence, and all that was said about the case for the defence in the summing-up was that the defence was an alibi which the jury would no doubt think had been pulled to pieces by counsel for the prosecution. The learned Chairman did not remind the jury about the evidence for the defence, nor did he comment on it. The fact that the jury would probably not accept the defence was not relevant; the prisoner was entitled to have it put to the jury. The conviction would be quashed. [H. P.]

COMMENTARY. This follows the authority of *R.* v. *Dinnick* (1909) 3 Cr.App.R. 77, where a conviction was quashed on the ground that the defence was not adequately put to the jury. See also *R.* v. *Waters* [1954] Crim.L.R. 147 (false pretences) and Archbold, 33rd ed., 198–200.

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[28] For the appellant: *D. Henderson* (instructed by the Registrar, Court of Criminal Appeal) For the Crown: *F. B. Purchas* (instructed by Dell & Loader, Shoreham-by-Sea).

Acts and Orders

Birds

WILD BIRDS (HUMBER SANCTUARY) ORDER, 1955 (S.I. No. 1532): operative October 14, 1955. A bird sanctuary is created in part of the Humber estuary defined in the schedule to the Order. It is an offence for any person wilfully to kill, injure or take any wild bird in the sanctuary or to attempt to do so. No one may enter the sanctuary during the period beginning on September 1 in each year and ending on February 20 in the next following year, except persons entering by boat who do not leave the boat while within the sanctuary or persons who enter for the purposes of the River Boards Act, 1948, or any person appointed in writing by the Nature Conservancy.

A person committing an offence under the Order is liable to the special penalties prescribed in section 12 (2) (*a*) of the Protection of Birds Act, 1954 ([1954] Crim.L.R. 638).

Factories

INDIARUBBER REGULATIONS, 1955 (S.I. No. 1626): operative November 8, 1955. The use of carbon bisulphide (CS_2) in the cold-cure process of vulcanising when cloth is proofed with rubber is prohibited.

For penalties for offences see section 130 of the Factories Act, 1937.

London

The following Orders have been made detailing prescribed routes: S.I. 1955, Nos. 1509, 1510 (City of London); 1539 (Wood Green); 1600 (Esher, Surrey).

The following Order has been made amending the Parking Regulations of 1950 (S.I. No. 1571): S.I. 1955. No. 1508.

Salmon and Freshwater Fisheries

HERTFORDSHIRE (PREVENTION OF POLLUTION) ORDER, 1955 (S.I. No. 1527): operative October 3, 1955. The county council of Hertford is given power to exercise certain functions under the River Boards Act, 1948, as if that council were a river board. These powers include those under section 16 (powers of entry and inspection) and section 17 (penalty for obstruction).

Trade and Industry

Census of Production (1956) (Returns and Exempted Persons) Order, 1955 (S.I. No. 1592): operative December 31, 1955. For the purposes of the census of production being taken by the Board of Trade in 1956 under the Statistics of Trade Act, 1947, persons may be required to furnish returns about all the matters set out in the schedule to the Act. Persons concerned in coal, gas, electricity, oil-shale, crude or refined petroleum or shale-oil undertakings who are duly required before March 31, 1956, to furnish the same information to the Minister of Fuel and Power or the Secretary of State under other provisions are exempted from furnishing returns under the Act of 1947.

For penalties for failure to make returns or for giving false information, see section 4 of the Act of 1947.

Letters to the Editor

The Power to Prosecute

Sir,

I have read the article " The Power to Prosecute " by Dr. Glanville Williams in the *Criminal Law Review* for November.

On page 671, line 8, he says " . . . the question arose under the Sunday Observation Prosecution Act whether a police officer who is in temporary command during the absence of the chief constable can effectively consent to proceedings instead of the chief constable, and the court held that he could not. This decision now appears to be qualified for boroughs . . . etc."

Regulation 3 of the Police Regulations, 1952 (S.I. 1952, No. 1704), states: " A member of a borough police force duly appointed by the watch committee to act as deputy chief constable shall, in the absence . . . of the Chief Constable . . . have all the powers and duties of the chief constable. . . ." This merely gave to a deputy Chief Constable in Borough Police Forces the powers given to a deputy Chief Constable of a County Police Force since 1839, by section 7 of the County Police Act, 1839.

Yours faithfully,
W. J. Williams,
Chief Constable.

Caernarvon.

[Regulation 3 of the Police Regulations, 1952, replaces regulation 3 of the Police Regulations, 1948 (S.I. No. 1216), referred to in his article by Dr. Glanville Williams—Eds.]

Books and Periodicals

Reviews:

The Railroad Police. By H. S. Dewhurst. A monograph in the Police Science Series edited by V. A. Leonard, Chairman, the Department of Police Science and Administration, State College of Washington. Springfield, Illinois: Charles C. Thomas; Oxford: Blackwell Scientific Publications, Ltd. 1955. ix and 203 and (index) 7 pp. (40s. net.)

Historians have described the impact and influence of railways on life in Britain and the United States but little attention has been given to the policing of these great transport systems. The railways have experienced every kind of crime and, in particular, have had to protect themselves against theft, fraud, and malicious damage. In 1832 the *Annual Register* proclaimed that railways would never be subject to pilferage like the canals but soon afterwards the first serious railway robberies were reported. The story was the same in the United States.

This book by the Secretary of the Protective Section of the American Railroads Association is unique because never before has any writer on police affairs concentrated exclusively on the work of the railway police. It describes the origin, development, organisation, and special functions of the railway police in the United States and does not, needless to say, forget the redoubtable Pinkerton. It was no easy task because there are 400 separate railway undertakings in the United States and the railway law varies from state to state. Great efforts have been made to ensure liaison for police purposes and Mr. Dewhurst underlines the difficulties involved in matters of jurisdiction and the extraordinary medley of police powers. In Britain, of course, there is much statute law of general application, *e.g.*, the Regulation of Railways Acts, 1840 to 1889, and a unified force, the British Transport Commission Police, whose officers are empowered to exercise their police authority wherever the railways run and are backed up by a centralised legal department.

There are 9,000 railway police in the United States and 3,500 in Britain. The combined American forces deal with 60,000 " arrests " a year which presumably covers prosecutions of all kinds, however initiated. The British force deals with up to 30,000 felonies and misdemeanours annually. But the American railways also have to cope with half a million persons every year for " stealing rides " and trespassing. Trespass is a major problem aggravated by the fact that the law is capable of infinite variations as the railways cross city, county, and state boundaries. It is interesting to note that for all the alleged crime in the States the losses in transit last year amounted to less than one million dollars, which compares favourably with the British losses to the same figure but in pounds sterling.

This is a most interesting and, indeed, valuable book on long neglected aspects of crime prevention and law enforcement.

W. O. GAY.

From Gun to Gavel. The court room recollections of James Mathers of Oklahoma, as told to Marshall Houts. London: Souvenir Press, Ltd. 1955. 230 pp. (15s. net.)

This book recounts the recollections of James Mathers of Oklahoma, who started practice as a county attorney before the territory achieved statehood, and when it was (in the publishers' words) " an outlaw's paradise." It will appeal to those with a taste for " westerns."

M. W. M.

The Shadow. The Amazing Exploits of Frank Fahy. By Vince Kelly. London: Angus and Robertson. 1955. x and 204 pp. (12s. 6d. net.)

This is the story of the Frank Fahy who for thirty years was a member of the New South Wales Police Force, and during that time operated entirely as an " under-cover man." In this capacity he was responsible for ending the activities of many criminals, undergoing many risks in the process. The story is told by a newspaperman, and the book betrays its origin in its style, but it is nevertheless of considerable interest.

M. W. M.

Books Received:

Counterfeit. By Sonia Cole. London: John Murray. 1955. vii and 202 and (references and index) 6 pp. (15s. net.)

Thirty Who Were Tried. By Leslie Hale, M.P. London: Victor Gollancz, Ltd. 1955. 304 pp. (18s. net.)

Pageantry of the Law. By James Derriman, Barrister-at-Law. London: Eyre & Spottiswoode. 1955. 215 and (index) 9 pp. (25s. net.)

The Hamlyn Lectures: The Proof of Guilt. A Study of the English Criminal Trial. By Glanville Williams, LL.D., Fellow of Jesus College, Cambridge, Barrister-at-Law. London: Stevens & Sons, Ltd. 1955. viii and 294 pp. (17s. 6d. net.)

Hypnosis. Its Meaning and Practice. By Eric Cuddon, M.A., B.C.L., Barrister-at-Law. London: G. Bell & Sons, Ltd. 1955. viii and 167 and (appendix, bibliography and glossary) 8 pp. (10s. 6d. net.)

The Road to Justice. By the Right Honourable Sir Alfred Denning, one of the Lords Justices of Her Majesty's Court of Appeal in England. London: Stevens & Sons, Ltd. 1955. viii and 118 pp. (10s. 6d. net.)

Articles:

Law Quarterly Review, Vol. 71.
  Obtaining by false pretences, p. 477.

International Criminal Police Review, October, 1955.
  Illegally obtained evidence, p. 241.
  Some aspects relative to the identification of synthetic fibres, p. 246.

Law Journal, Vol. 105.
  Magisterial notes, p. 651.

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Merionethshire (Dolgelley)	4	Suffolk, East	7
Montgomeryshire (Welshpool)	6	Suffolk, West	4
Norfolk (Norwich)	5	Surrey	11
(King's Lynn)	12	Sussex, East	4
Northamptonshire	6	Sussex, West	6
Nottinghamshire	3	Warwickshire	4
Oxfordshire	4	Wiltshire (Devizes)	5
Peterborough, Soke of	13	Worcestershire	12
Radnorshire	5		

BOROUGH QUARTER SESSIONS, 1955

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Blackburn	11	Maidstone	21
Bradford	6	Newark-on-Trent	26
Bristol	3	Newcastle-under-Lyme	7
Burnley	6	Oldham	4
Burton-upon-Trent	7	Plymouth	6
Bury St. Edmunds	14	Pontefract	21
Canterbury	15	Poole	12
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Glossary

[Guide to pronunciation. Pronounce each syllable slowly as an ordinary English word, accenting the part in italics. Then repeat the whole phrase quickly but keep each sound distinct. Where at the end of a syllable the letter " r " appears in brackets (r) do not roll it. The letter " a " by itself is long, as in bay.]

Dictum—a saying [*dick*-tum].

In banc—judges sitting in full court as distinguished from sittings of judges alone [in bank].

Inter alia—among other things [*inter a*-lee-e(r)].

Locus in quo—the place in which [*lock*-us in kwo].

Mens rea—guilty mind [men's rea(r)].

Post factum—after the act or deed [post *fact*-um].

Supra—above [*sue*-pre(r)].

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April 1, 1955

Importation of Plants Order, 1955, operative: see p. 196.

Approved Schools (Contributions by Local Authorities) Regulations, 1955, operative: see p. 257.

SPRING ASSIZES, 1955

First Working Days

North Eastern Circuit (Lynskey, Devlin, Barry and Karminski JJ.)

April 20: Leeds

Northern Circuit (Oliver, Wallington, Donovan and Ashworth JJ.)

March 29: Liverpool

April 19: Manchester

CENTRAL CRIMINAL COURT, 1955

First working day: April 19

COUNTY QUARTER SESSIONS, 1955

	April
Berkshire	4
Breconshire	13
Buckinghamshire	4
Buckinghamshire (Appeals)	18
Cambridgeshire	1
Cardiganshire	14
Carmarthenshire	1
Derbyshire	6
Dorset	6
Essex (Appeals)	14
Essex	27
Flintshire	14
Hampshire	13
Herefordshire	4
Hertfordshire (St. Albans)	4
Hertfordshire (Appeals: St. Albans)	5

	April
Huntingdonshire	5
Isle of Ely (Ely)	6
Kent, East	4
Kent, West	18
Lancaster	
(Lancaster)	5
(Preston)	19
(Liverpool)	26
Lincolnshire	
(Holland: Spalding)	7
(Kesteven: Sleaford)	15
(Lindsey)	28
London	5
London (Appeals)	7
London	26
Merionethshire (Bala)	12
Middlesex (Appeals)	19
Monmouthshire	6

	April
Montgomeryshire (Newtown)	7
Norfolk (Norwich)	6
Northamptonshire	14
Oxfordshire	5
Pembrokeshire	4
Peterborough, Soke of	14
Radnorshire	6
Shropshire	13
Somerset	13
Suffolk, East	1
Suffolk, West	5
Surrey	19
Surrey (Appeals)	28
Sussex, East	5
Westmorland	1
Yorkshire, North Riding	7

BOROUGH QUARTER SESSIONS, 1955

	April
Bath	4
Birkenhead	18
Birmingham	14
Blackburn	15
Bridgwater	22
Bristol	4
Burton-upon-Trent	15
Bury St. Edmunds	15
Canterbury	2
Cardiff	13
Croydon	15
Deal	1
Derby	13
Dover	15
Dudley	4

	April
Folkestone	16
Gravesend	14
Grimsby	4
Guildford	2
Guildford	16
Kingston-upon-Hull	13
Lichfield	28
Lincoln	14
London	13
Maidstone	29
Manchester	13
Merthyr Tydfil	21
Middlesbrough	5
Newark	26

	April
Newcastle-under-Lyme	1
Northampton	15
Norwich	4
Oldham	14
Plymouth	13
Pontefract	13
Portsmouth	4
Reading	20
Rochester	4
Salisbury	15
Sunderland	13
Swansea	27
West Ham	18
Wigan	4

Glossary

[Guide to pronunciation. Pronounce each syllable slowly as an ordinary English word, accenting the part in italics. Then repeat the whole phrase quickly but keep each sound distinct. Where at the end of a syllable the letter " r " appears in brackets (r) do not roll it. The letter " a " by itself is long, as in bay.]

Bona fide—in good faith [*bone*-e(r) *fie*-dee].
Corpus delicti—the body of essential fact constituting a criminal offence (Pullan and Alcock—*The Commercial Dictionary*) [core-pus dee-lick-tie].
Dicta—sayings [*dick*-te(r)].
Inter alia—among other things [*inter* *a*-lea(r)].
Sine die—without naming a day, indefinitely [*sigh*-knee *die*-ee].

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"Woodlands," Market Rasen, Lincs.

Glossary

[Guide to pronunciation. Pronounce each syllable slowly as an ordinary English word, accenting the part in italics. Then repeat the whole phrase quickly but keep each sound distinct. Where at the end of a syllable the letter " r " appears in brackets (r) do not roll it. The letter " a " by itself is long, as in bay.]

Ab initio—from the beginning [ab in-*ish*-ee-oh].
Actus reus—guilty act [*act*-us *ree*-us].
Casus omissus—a matter which should have been, but has not been, provided for in a statute or in statutory rules (Osborn—*The Concise Law Dictionary*) [*case*-us oh-*miss*-us].
Inter alia—among other things [*in*ter *a*-lea(r)].
Mens rea—guilty mind [men's rea(r)].
Per capita non per stirpes—individually and not through family [per *cap*-it-e(r) non per *stir*-peas].
Per incuriam—without proper consideration of all relevant matters, thus a decision is not a binding precedent if the court's attention has not been drawn to the relevant authorities [per in-*cure*-ee-am].

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	August		August
Buckinghamshire (Appeals)	29	London (Appeals)	11
Essex	31	London	30
Kent, East	29	Sussex, West	4
London	9		

BOROUGH QUARTER SESSIONS, 1955

	August		August
Cardiff	3	Plymouth	3
Kingston-upon-Hull	3	Sunderland	3
Oldham	2	Swansea	3

The date of the Swansea Quarter Sessions has been altered from September 7 to August 3.

Glossary

[Guide to pronunciation. Pronounce each syllable slowly as an ordinary English word, accenting the part in italics. Then repeat the whole phrase quickly but keep each sound distinct. Where at the end of a syllable the letter " r " appears in brackets (r) do not roll it. The letter " a " by itself is long, as in bay.]

Ab initio—from the beginning [ab in-*ish*-ee-oh].

Aliunde—from elsewhere, from another person, place or quarter [a-lie-*unn*-dee].

Contra bonos mores—against good morals [*con*-tra(r) *bone*-oss *more*-ees].

De novo—afresh, anew [dee no-vo].

Dicta—sayings [*dick*-te(r)].

Ex parte—on behalf of [ex *par*-tee].

Functi officio—persons whose duties have been discharged and whose office or authority is therefore at an end [*funk*-tie off-*fish*-ee-oh].

Inter alia—among other things [*inter a*-lea(r)].

Per—by [per].

Per se—by or in itself (*The Concise Oxford Dictionary*) [per see].

Subpoena duces tecum—a writ commanding a person to attend in court under a penalty and to bring with him certain documents in his possession [sub-*pea*-na *dew*-sez *tee*-come].

Supra—above [sue-pre(r)].

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Glossary

[Guide to pronunciation. Pronounce each syllable slowly as an ordinary English word, accenting the part in italics. Then repeat the whole phrase quickly but keep each sound distinct. Where at the end of a syllable the letter " r " appears in brackets (r) do not roll it. The letter " a " by itself is long, as in bay.]

A priori—from cause to effect [a pry-*or*-eye].

Coram nobis—before us ourselves. An old form of writ of error [core-am no-bis].

De minimis non curat lex—the law does not concern itself with trifles (Osborn—*The Concise Law Dictionary*) [dee minny-miss non *cure*-at lex].

Ex gratia—out of favour [ex *grey*-shea(r)].

Ex post facto—retrospectively [ex post *fact*-oh].

Quo warranto—a form of writ requiring a person to show by what authority he claims an office [kw-oh warran-toe].

Inter alia—among other things [*in*ter *a*-lea(r)].

Tu quoque—you also. An argument which consists in retorting a charge upon one's accuser [O. E. D.] [two kw-oh-kw-ee].

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Glossary

[Guide to pronunciation. Pronounce each syllable slowly as an ordinary English word, accenting the part in italics. Then repeat the whole phrase quickly but keep each sound distinct. Where at the end of a syllable the letter " r " appears in brackets (r) do not roll it. The letter " a " by itself is long, as in bay.]

Actus reus—guilty act [*act*-us *ree*-us].

Ad idem—of the same mind, agreed [ad id-dem].

De novo—afresh, anew [dee no-vo].,

Inter alia—among other things [*in*ter *a*-lea(r)].

Nisi—unless. An order *nisi* is one which is not to take effect unless the person affected by it fails to show cause against it within a certain time [nigh-sigh].

Nolle prosequi—to be unwilling to prosecute. An act of the Attorney-General to stay proceedings upon an indictment or information pending in any court [nolly pross-ek-wee].

Per—by [per].

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Glossary

[Guide to pronunciation. Pronounce each syllable slowly as an ordinary English word, accenting the part in italics. Then repeat the whole phrase quickly but keep each sound distinct. Where at the end of a syllable the letter " r " appears in brackets (r) do not roll it. The letter " a " by itself is long, as in bay.]

Ab initio—from the beginning [ab in-*ish*-ee-oh].

Actus reus—guilty act [*act*-us *ree*-us].

Ad idem—of the same mind, agreed [ad id-dem].

Aliunde—from elsewhere, from another person, place or quarter [a-lie-*unn*-dee].

Amicus curiae—literally, "a friend of the court." One who calls the attention of the court to some point of law or fact which might otherwise be overlooked. This term is frequently applied to counsel who undertake to assist the court in a matter in which they are not engaged professionally (Pullan and Alcock—*The Commercial Dictionary*) [am-*eye*-cuss *cure*-ee-eye].

A priori—from cause to effect [a pry-*or*-eye].

Bona fide—in good faith [*bone*-e(r) *fie*-dee].

Casus omissus—a matter which should have been, but has not been, provided for in a statute or in statutory rules (Osborn—*The Concise Law Dictionary*) [*case*-us oh-*miss*-us].

Contra—against [*con*-tra(r)].

Contra bonos mores—against good morals [*con*-tra(r) *bone*-oss *more*-ees].

Coram nobis—before us ourselves. An old form of writ of error [core-am no-bis].

Corpus delicti—the body of essential fact constituting a criminal offence (Pullan and Alcock—*The Commercial Dictionary*) [core-pus dee-lick-tie].

De facto—in fact, whether by right or not (*The Concise Oxford Dictionary*) [dee *fact*-oh].

De minimis non curat lex—the law does not concern itself with trifles (Osborn—*The Concise Law Dictionary*) [dee minny-miss non *cure*-at lex].

De novo—afresh, anew [dee no-vo].

Dictum, dicta—a saying, sayings [*dick*-tum, *dick*-te(r)].

Ejusdem generis—of the same kind or nature. A rule of construction applicable where particular words are followed by general words: the general words are limited by the particular words (Pullan and Alcock—*The Commercial Dictionary*) [*ee*-juss-dem *gen*-er-iss].

Ex gratia—out of favour [ex *grey*-shea(r)].

Ex hypothesi—following from this assumption [ex high-*poth*-ess-eye].

Ex parte—on behalf of [ex *par*-tee].

Ex post facto—retrospectively [ex post *fact*-oh].

Expressio unius, exclusio alterius—the express mention of one thing is the exclusion of another [ex-*press*-ee-oh you-*nigh*-us, ex-*clue*-see-oh alter-*eye*-us].

Fructus industriales—crops or produce of the soil which are the result of labour in sowing the seed or in cultivation, such as corn, potatoes, etc. (Osborn—*The Concise Law Dictionary*) [fruct-us in-*dust*-tree-a-lees].

Functi officio—persons whose duties have been discharged and whose office or authority is therefore at an end [*funk*-tie off-*fish*-ee-oh].

Habeas corpus—literally, "thou shalt have the body." A prerogative writ to a person detaining another in custody commanding him to produce that person before the court [*hay*-be-ass *core*-pus].

In banc—judges sitting in full court as distinguished from sittings of judges alone [in bank].

Inter alia—among other things [*in*-ter *a*-lear(r)].

Locus classicus—best known or most authoritative passage on a subject (*Concise Oxford Dictionary*) [*lock*-us classic-us].

Locus in quo—the place in which [*lock*-us in kwo].

Locus standi—literally, " a place of standing." The right to be heard in court or other proceeding (Osborn—*The Concise Law Dictionary*) [*lock*-us stand-eye].

Mens rea—guilty mind [men's rea(r)].

Modus operandi—the way in which anything is done, mode or manner of operation [*mode*-us op-er-*and*-eye].

Nisi—unless. An order *nisi* is one which is not to take effect unless the person affected by it fails to show cause against it within a certain time [nigh-sigh].

Nolle prosequi—to be unwilling to prosecute. An act of the Attorney-General to stay proceedings upon an indictment or information pending in any court [nolly pross-ek-wee].

Obiter—by the way, in passing [*oh*-bitter].

Per—by [per.]

Per capita non per stirpes—individually and not through family [per *cap*-it-e(r) non per *stir*-peas].

Per curiam—by the court [per *cure*-ee-am].

Per incuriam—without proper consideration of all relevant matters; thus a decision is not a binding precedent if the court's attention has not been drawn to the relevant authorities [per in-*cure*-ee-am].

Per quod servitium amisit—literally, " whereby he lost his services." An action for damages lies against any person who commits a tortious act against the servant of another, whereby the master is deprived of his services [per quod serve-*it*-ee-um a-*my*-sit].

Per se—by or in itself (*The Concise Oxford Dictionary*) [per see].

Post factum—after the act or deed [post *fact*-um].

Prima facie—at first sight, on the face of it [pry-me(r) *fay*-she].

Primus inter pares—first among equals [*prime*-us *in*-ter *par*-rees].

Puisne—junior, inferior, lower in rank [puny].

Quo warranto—a form of writ requiring a person to show by what authority he claims an office [kw-oh warran-toe].

Res gestae—the facts surrounding or accompanying a transaction which is the subject of legal proceedings [rees *jest*-ee].

Simpliciter—absolutely, without qualification (Pullan and Alcock—*The Commercial Dictionary*) [sim-*pliss*-it-er].

Sine die—without naming a day, indefinitely [*sigh*-knee *die*-ee].

Subpoena duces tecum—a writ commanding a person to attend in court under a penalty and to bring with him certain documents in his possession [sub-*pea*-na *dew*-sez *tee*-come].

Supra—above [*sue*-pre(r)].

Tu quoque—you also. An argument which consists in retorting a charge upon one's accuser [*Oxford English Dictionary*) (two kw-oh-kw-ee].

Ultra vires—literally " beyond the power." An act in excess of the authority conferred by law and therefore invalid (Osborn—*The Concise Law Dictionary*) [*ull*-tra(r) *vie*-rees].

Vide—see [*vie*-dee].

PERTH —

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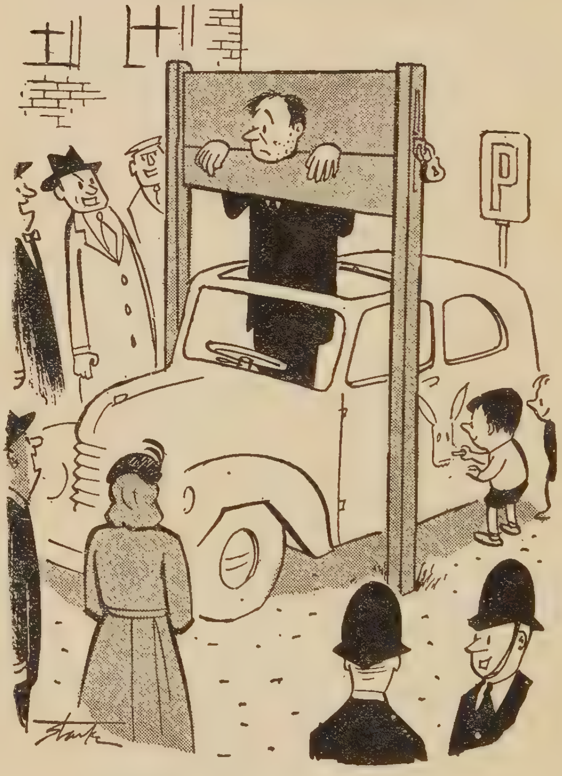

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